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vol XX OF

JOSEPH GERRALD,

ON A

CHARGE OF SEDITION,

BEFORE THE

HIGH COURT OF JUSTICIARY,

AT

EDINBURGH.

To which are added,

Parallel Passages between the Speeches of Lord Chief Justice
JEFFRIES, in the Case of ALGERNON SYDNEY,

AND OF

The Lord Chief Justice CLERK, on the Trial of JOSEPH GERRALD.

CORRECTED BY HIMSELF.

"The Furniture of ancient Tyranny is *not* worn to Rags."
See Burke on the Causes of the present Discontents.

L O N D O N :

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St. James's Square. 1794.



DEFENCE, &c.

Thursday, March 13, 1794.

WHEN the Court met, the interlocutor on the relevancy was read over, and the following gentlemen were choseⁿ as Jurors:

David Deuchar, seal-engraver, Edinburgh.
Peter Hill, bookfeller, there.
John Bell, bookfeller, there.
James Hunter, merchant, there.
Andrew Miligen, watch-case-maker, there.
Sir William Forbes, Bart. banker, there.
Peter Mathie, jeweller, there.
Alexander Gardner, jeweller, there.
William Creech, bookfeller, there.
Thomas Hutchinison, merchant, there.

Mr. Gerrald. My Lord, I object to Mr. William Creech; I understand he has repeatedly declared, in private conversations, that he would condemn any Member of the British Convention, if he should be called to pass upon their assize; and I wish to refer it to his own conscience, and his oath, whether he has not prejudged the principles upon which I am to be tried.

Lord Henderland. My Lord, the objection is, that he has prejudged the principles upon which Mr. Gerrald is to be tried; that he said he would condemn every member of the British Convention; it is stated in a loose way; it is not stated that he said he would do so whether they were guilty or not; I cannot see that it is a relevant objection: if he had said, he would condemn them whether they were guilty or not, it would have been a good objection, but at present it is too generally laid.

B

Lord

Lord Eskgrove. If the allegation had been, that Mr. Creech had said he would convict Mr. Gerrald, right or wrong, the objection would be good; but if it was only in common conversation that he had such an opinion of the intentions of the British Convention, it is not a good objection.

Lord Swinton. I am of the same opinion.

Lord Dunfermline. I perfectly coincide with your Lordships.

Lord Abercrombie. I am of the same opinion.

Lord Justice Clerk. As this objection is stated, I hope there is not a gentleman of the jury, or any man in this Court, who has not expressed the same sentiment.

Mr. Gerrald. Then my trial would be a matter of form merely; because a jurymen, by saying out of doors that he would condemn every member of the British Convention, takes for granted that very principle which remains to be proved. If a jurymen had only asserted that he would condemn all the disturbers of the public peace, no doubt he would be well warranted in making that assertion; but he says, he will condemn them, not because they were disturbers of the public peace, but because they were members of a convention, the illegality of which yet remains to be established: so that your Lordship must see that such a general declaration operates to the same conclusion, that he would condemn a man for that which may turn out to have been legal and constitutional.

Mr. Creech. My Lord, I never said so; it is impossible that I ever could say such a thing.

Lord Henderland. I think Mr. Gerrald is very ill advised in the way in which he stated the objection; because he has, in fact, acknowledged himself a member of the convention,

(The objection was repelled.)

John Hutchison, merchant, there.

John Sibbald, smith, there.

Alexander Nisbet, manufacturer, there.

William Ranken, taylor, there.

Archibald Campbell, brewer, there.

Lord Justice Clerk. Do you object to any of these gentlemen?

Mr. Gerrald. Yes, my Lord, I object to William Ranken; and the ground of my objection is this, and I can sustain it by both precedent and principle. It consists in this, Mr. Ranken is taylor to the king; and, of course, being in the pay of the crown, being occasionally in the habit of receiving favours from it, he cannot be a fit person to pass upon my assize. And, my Lord, I will sustain it by precedent. In the trial of Algernon Sidney, which, I trust, will never be adduced as a precedent, except to be violated, it is stated that "the Colonel excepted to
" several of the jury, to some as not being freeholders, and others
" as being in the king's service, and receiving wages from his
" Majesty."

"majesty." And I find, by the act of Parliament which took place immediately after the Revolution for reversing the attainder of Algernon Sydney, the very first causes stated as a ground of reversing the attainder, are, "Whereas Algernon Sydney, Esq. in the term of St. Michael, in the thirty-fifth year of the reign of our late sovereign King Charles II. in the Court of King's Bench at Westminster, by means of an unlawful return of jurors, and by denial of his lawful challenges," and so on. For these reasons the attainder was reversed.

Lord Henderland. The very same objection was stated in the case of Mr. Muir, and was then repelled.

Lord Justice Clerk. If it had been the king himself I don't see that it could be a valid objection.

(The objection was repelled.)

The Evidence for the Crown having closed, when the Solicitor General had finished, Mr. GERRALD rose and addressed the Jury:

Gentlemen of the Jury,

Mr. Solicitor General has told you, with great truth and solemnity, that the cause of which you are at present the judges, is one of the most important which ever came before man for the purpose of determination.

Gentlemen, if at an early period of my life it had been announced to me, that the task of defending the rights and privileges of nine millions of people would have devolved upon me, a simple individual, I should certainly, from my youth up, have devoted my whole time, with unremitting application, that I might be enabled to execute so sacred and important a trust. Unfortunately, though a considerable period has intervened between the time of my being served with an indictment and my trial, yet I have been, in great measure, distracted by various avocations, and my health much impaired by continual sickness. From my duty, however, no earthly consideration shall induce me to shrink. I, this day, come forward to advocate a cause, than which the sun never shone upon one of more deep and general concernment; and, impressed with this awful consideration, I advance to it with a tremor that shakes every fibre of my frame. But whatever be the result of this day's deliberation, I shall always look back to the part which I have taken, with the consciousness of a man who has endeavoured well; for, however weak the flesh may be, the spirit is strongly inclined to the service.

Gentlemen, the state-prosecutions which agitated and disgraced the middle of the last century were by no means of the same importance with those of the present day.

The contest between John Hampden and the crown rested solely upon this question; whether the crown or the parliament

should have the power of raising the supplies? but it was always allowed that the object of these supplies was the advancement of the general happiness. The cause which you are called to decide upon is not merely a matter of pecuniary consideration; you are called upon to decide whether man, who is by his nature social and rational, shall meet in society for the purpose of improving his faculties, and exercising those powers of reason which the common Father of us all has given us, to enlighten our understandings and ennoble our hearts; or, whether by relinquishing every thing that is virtuous, every thing that is praise-worthy, every thing that is valuable in the condition of our humanity, we shall be reduced to a situation beneath the beasts that perish?

Gentleman, as an Englishman, I will not say a stranger in this country, for, from being members of the same community we have the same friends and the same foes; and the articles of the Union, I believe, say, that the natives of both countries are entitled to the same privileges—yet as an Englishman, I cannot but consider my situation as varying in some measure from that of a native of this country. In England, had I committed the supposed crime charged against me, the process would have been very different. The present legal process too much resembles those instituted in the last century, when prosecutions upon prosecutions were instituted for the purpose of destroying the freedom of our country: I say, the proceedings of the High Court of Justiciary too much resemble the proceedings of the Star Chamber before it was abolished. We have not in this country the advantage which we have in England of the bill being originally found by a grand jury. We have not afterwards the privilege of a petty jury selected entirely by the sheriff; but I understand that the assize is first appointed by the public prosecutor, from which fifteen are afterwards selected by the court.

This circumstance did not, however, deter me (though it was frequently urged amongst other arguments) from coming down here to take my trial. No; when the scourges of the late prosecutions, and the melancholy fate of the prosecuted were held over my head, I was not to be deterred from doing my duty; though by many I was considered as devoted a victim as Regulus departing into voluntary exile, or like Curtius plunging into the gulf for the salvation of his country.

Gentlemen, informations began in England during the reign of one of our worst princes, Henry VII. who filled his private coffers by the plunder of his subjects. In conformity to this process, I am sorry to acquaint you, that I was brought before the sheriff of this county by the operation, not by the regular service of a warrant. When I was taken up I asked for the warrant, but it was refused. My temper, I trust, is mild and peaceful; though in England had a similar process taken place, the officer might have paid for his irregular conduct with the forfeiture of his life. But that was not my purpose; for as truth is my only
object,

object, so reason is my only weapon. My papers were taken out of my bureau and carried before the sheriff. Knowing that those papers could contain nothing to criminate me, I claimed them as my property, and signed the claim without any hesitation. I am shocked, however, to think that so gross a proceeding should take place in any country as a disclosure of secrets by taking private papers. Since the original seizure of my papers, a private letter has been arrested in its passage to me from London, and in an attempt to see the contents, has been destroyed without its ever reaching me. I demanded what could be the object of this procedure. I was informed that it was for the purpose of collecting evidence against me. This collection of evidence then, it seems, may be made with impunity in Scotland, by as gross a violation of the laws of the land as certain other collections are made, of which the collectors when taken are afterwards hanged.

Gentlemen, the Solicitor General acknowledged with much candor, that if he could not prove the criminal intention, he could prove nothing. It is upon this grand principle that I rest my defence; it is neither upon legal chicanery nor legal quibbles; these would be unworthy of the cause in which I am engaged. If the criminality of the intention alone can constitute the offence, either in a legal or moral point of view, I trust I shall be able to make out so clear a case, notwithstanding the calumnies which the living breath of rumour may have cast upon me, that you yourselves, discarding prejudices which it is possible you may have imbibed, will retire from this Court as fully satisfied of my innocence as I am myself.

Gentlemen, if fugitation is in the eye of the law deemed a presumption of guilt, appearance by parity of reason must be deemed a presumption of innocence. Notwithstanding the pressing solicitations and strong inducements held out to me by the society who delegated me, and who would have paid my bail, I determined to come down and appear before you. Can there then exist a stronger proof of the consciousness of the purity of my own intentions, than my having voluntarily appeared before that tribunal which I might have shunned, and from which innocence itself has often fled?

Gentlemen, though it does not come immediately before you, I do conceive that my being brought to trial at this particular time is a harsh and rigorous measure; and it is rather remarkable that on the last Monday, a period which was marked for the first day of my trial, and when I appeared here before the Court, our Representatives in Parliament were, in fact, sitting in judgement upon these very judges; nor do I think it would have degraded the dignity of their functions, if they had acted with less heat and with more deliberation, and had patiently waited till the result of the proceedings of the high court of parliament had been known upon their conduct.

Gentlemen, the history of Britain furnishes us with abundant instances of the interference of the legislature to correct judicial errors.

errors. In the case of Hampden, which was a period that must be dear and valuable to every Englishman, the parliament, by their interference, prevented the robbery of the subject by the arbitrary fiat of the crown. It is not fit, I own, that they should interfere where the public is not deeply interested; but where it is, they are bound to do so in justice to their representatives, and they always have done so: nay, they have gone further, and where the necessity was great, they have even come to a resolution in point of law, contrary to the judgement of a court of law, and to the opinion of ten out of twelve judges. In case the judges violated the law (a circumstance which in the late cases is yet to be determined) or where they suspected any undue influence, either in the exertion or the support of the prerogative, by officers of the crown, or *by judges*, they have always interposed. Is it possible to forget or to controvert either their conduct, or the propriety of it, in the great case of ship-money, which was first brought into question by Mr. Hampden, a private gentleman, who, so far from regarding the trumpery, pettyfogging consideration of damages, declared, that he would not pay it were it but one farthing, if pretended to be demanded of right, and by colour of law: and yet proceeded, according to my Lord Clarendon's own account, with great temper and moderation in that suit? His Lordship adds, "and all the world knows that never any cause had been debated and, argued more solemnly before the judges, who, after long deliberation among themselves, and being attended with the records which had been cited on both sides, delivered each man his opinion and judgement publicly in court, and so largely, that but two judges argued in a day." Ten of them solemnly pronounced their opinion for the right claimed by the crown, and which it had regularly exercised for four years immediately preceding: but, as Lord Clarendon observes, (Lord Clarendon was a monarchical man, much attached to Charles I.) "*the judgement proved of more credit and advantage to the gentleman condemned than to the king's service*, however, (adds he) these errors in government were not to be imputed to the court at that time, but to the spirit and over activity of the lawyers of the privy-council, who should more carefully have preserved their profession and its professors from being profaned by those services which have rendered both so obnoxious to reproach."

Gentlemen, this circumstance, I apprehend, is an object very important for your consideration, and which, I trust, will have some influence in the guidance and direction of your verdict; inasmuch as you find that in England, in a case where ten out of twelve of the judges gave their opinions against the defendant, yet, still their sentence was reversed at a higher tribunal, that of Parliament. The sentence was reversed, and even Clarendon, a monarchical man, who comes down to us under great purity of character, tells you, "that these prosecutions were instituted and

“carried on by the crown lawyers, who were over-active in the execution of their duty, and had subjected them and the profession as obnoxious to reproach.”

Gentlemen, the indictment contains against me four charges. I shall endeavour briefly (in order that I may take up as little of your time as possible) to state these charges specifically, and to give as specific answers to those charges, as the combined operation of my understanding and my conscience directs me to give.

The first charge is of so extraordinary a nature, that it was some time before I could bring myself to sit down to a serious refutation of it; and upon any occasion not so important as the present, I should either have combated it with the weapon of ridicule, (of which, even, it is hardly deserving) or have thrown it behind me with silent contempt. I have been charged with making use of French terms, though it has been proved, as I shall presently shew, that this charge, ridiculous as it is, is also fallacious.

Gentlemen, it is a most extraordinary thing, that such a charge should be made in a country, against a native of that part of the kingdom, I speak not of Scotland, but of England, where all our old law proceedings are in that very language. The writings of the venerable Littleton, whose tenures contain the whole doctrine of our law of landed property, upon which my Lord Coke, the great Oracle of English Law, has written his Commentaries, are in the French language.

Britton, and other writers of as great authority, though of more remote antiquity, and who are deemed the legal patriarchs (as it were) in the history of jurisprudence, wrote in French; and the king himself, even at this period, never gives his assent or refusal to any act of parliament which binds the subject, without expressing himself in the language of that country.

Gentlemen, I say not this for the purpose of vindicating myself from these charges, for it has been proved to you clearly, from the evidence of Rofs, that these French terms were of his own insertion. But I cannot help thinking that a spirit of malevolence dictated that part of the charge, and that these invidious insertions were made for the purpose of infusing into your minds an idea that I wished to co-operate with France, with whom we are now at war: and I am the more authorised to state this, as the first indictment with which I was served, was totally devoid of these charges, and they have only been introduced in the second. But these terms were the pepper and salt to season the dish for the gratification of the palate of the crown lawyers, and I, it seems, was to be offered up, like another son of Thyeistes, as a victim for the banquet.

Gentlemen, the next charge against me is that of having used the word *citizen*. It was said upon a former occasion by the Solicitor General, that the use of the term was in itself innocent, and in many circumstances might undoubtedly be proper; but here,

here, again, he made a distinction. If a man, in the year 1745, (said he) had walked the streets with a white cockade, it would have been highly criminal; but now the action would be perfectly harmless, because there is no party existing amongst us of an attachment to whom it might be interpreted as an emblem.

But, Gentlemen, I hope your understandings will not be perverted by language of this kind, as you must see a most material and essential difference between marching up the street with a white cockade, and using the term *citizen*. The using of this term, though it may by some be deemed ridiculous, can, by none, be judged criminal. The word *citizen* is a term of peace, and denotes that relationship in which we stand to each other, as members of the same community, for the performance of our *civil duties*; whereas the wearing of a cockade is the emblem of a *military profession*, and in the year 1745 was a particular and avowed emblem of hostility to the government of the country.

Gentlemen, the next part of the charge is, that these meetings were illegal and seditious. Now their illegality, I apprehend, must depend either upon one or other of these three principles; either on the name *Convention* which we took, the principles which that convention intended to establish, or the manner in which they conducted themselves after they met. Take away these three things and no charge remains, consequently no ground of criminality. With regard to the first, our assumption of the name of Convention, I am sure your own understandings will inform you, and it is a position to which the crown lawyers have assented, that to take a particular name does not constitute a crime. Many respectable gentlemen, in point of fortune and talents, met in a Convention, expressly so called, for a Reform in the Scottish Boroughs, in Edinburgh, and though their views were different from ours, still it shews, that the bare assumption of that *name* does not constitute an offence in the eye of the law. Our crime must then depend either upon the principles which the British Convention intended to establish, or the manner in which they conducted themselves when met.

Gentlemen, in a cause so sacred as the present, I would scorn to tell a lie to save my life. I boldly avow, and I hope the reasons on which I shall defend the principles will be equal to the confidence with which I make the assertion, that our object was to procure, by *peaceful* means, Annual Parliaments and Universal Suffrage, and, in so doing, notwithstanding all the declamation that has been urged against it, I shall endeavour to convince you that the establishment of these principles is not only conformable to every maxim of sound government, but congenial to the spirit of the British Constitution itself. In order, Gentlemen, to ascertain the first point, that Universal Suffrage (persons incapacitated by crimes and insanity excepted) is in fact consonant to the first principles of all good government, it will be necessary that we take some short review of the fundamental principles of society

itself.

itself. The great object of the social institution, the great object for which men form themselves into society is, I apprehend, the safe enjoyment of their lives and property. If, then, in the earliest stages of society, every man possessed a right to the preservation of his life, and also to the peaceable enjoyment of his property, it follows of course, that the mode of government, which is best calculated for the attainment of those ends for which government itself was instituted, must be precisely that very mode of government which all reasonable beings would wish to see universally adopted amongst men. Now, as every man claims from nature, a right of judging for himself on the best manner of promoting his own interest, and as no individual is born with any distinguishing mark of pre-eminence over his fellow men, or with any *charter* of exemption from the ordinary frailties of human nature, so every act of authority exercised by one man over another, or by a legislature over the *collective body of the people*, unless it be exercised by the consent of the individual, in the one case, or of the collective body of the people governed in the other, must be an *act of tyranny*. The right of the exercise of the understanding is the noblest privilege of our nature, and indeed is inseparable from our condition, as moral agents; moral agency, in fact, being nothing else, but the being guided by the dictates of our own understandings and consciences in preference to those of another. And if, after the enactment of positive law, we submit to its authority, from which our private judgement may have revolted, it is only because a greater number of reasonable persons consenting to the law, than of those dissenting from it, carries with it the strongest presumption, that the passing such law has been the result of a greater portion of reason, than its rejection would have been—that it is founded in justice and truth, and therefore more conducive to the great ends of society, inasmuch as it has received the authoritative stamp of the approbation of the greater number of its members, who, in all well-regulated communities, being equally entitled to a participation of its benefits, must of course be equally interested in promoting its welfare.

It is not true, that when men agree to erect a government they give up any portion of their rights; No; they only adopt a different mode of enjoying them. They give up nothing; but by combining their own *particular* force with the force of others, they adopt a plan, by which they are enabled to possess their rights in greater security. All just government, therefore, being only a delegation, it cannot be armed with more power than it derives from the consent of them over whom it is exercised. Now, as prior to the establishment of government, no man had a right to take from another any property without his consent, and as all just authority exercised by any government must be derived from the people, so the government (which is, in other words, A NATIONAL ASSOCIATION FOR THE GENERAL GOOD) cannot of right exercise any power, which one individual, before government was

established, was not authorized to exercise over another. Hooker, to whom Queen Elizabeth always applied the just epithets of learned and judicious, asserts, that the principle which I have just stated is the only solid foundation of all legislative authority. Laws they are not, says he, which *public approbation* hath not made so. *Hooker's Eccles. Pol. lib. i. sect. 10.* And Mr. Locke expressly says, that "as government cannot be supported without great charge (a truth which we, God knows! feel every day to our cost,) so it is fit that every one who enjoys his share of the protection, should pay out of his estate his proportion for the maintenance of it. *But still it must be with his own consent*, i.e. the consent of the majority, giving it either by themselves, or their representatives chosen by them. For if any one shall claim a power to lay and levy taxes on the people by his own authority, and without such consent of the people, he thereby invades the fundamental law of property, *and subverts the end of government.* FOR WHAT PROPERTY HAVE I IN THAT WHICH ANOTHER MAY, BY RIGHT, TAKE WHEN HE PLEASES TO HIMSELF?" Here then, Gentlemen, is the doctrine of *Universal Suffrage* expressly laid down. For as no man, in a state of society, can be altogether without property, either inherited or acquired by his daily labour, and as every man in the country pays a tax to government, either directly to the tax-gatherer, or indirectly through the commodities which he consumes, which all taxes ultimately affect, so it appears to me clear as the light of Heaven, that every man of adult years, not incapacitated by crimes or insanity, has a RIGHT TO A VOTE; otherwise he may exclaim, in the language of Mr. Locke, "what property have I in that which another may by right take when he pleases to himself?" That government, then, Gentlemen, which is not a government of *consent*, must of necessity be a government of *usurpation*.—After all, there are but three modes (except a man allows himself to be a public mendicant) in which money passes from man to man; by force, by fraud, or consent. The first, it will not be contended, except by conquerors or highwaymen, can ever establish a just ground of possession. By the operation of the second principle, I am afraid, it does pass, whenever a man pays a tax in a government in which he is not represented. During the American war, Lord Camden, the first law authority in England, and now president of the council, repeatedly asserted that "*taxation and representation were inseparable*" Now, if his lordship meant any thing by the word representation, he certainly must have meant *adequate* representation, for no other deserves the name, or answers the end; which adequate representation is well explained by Sir Thomas Smith, a writer of great note and authority, in his Commonwealth of England, p. 37. "Every Englishman," says he, "is intended to be present in parliament, either in person, or by procurator and attorney, of whatever pre-eminence, state, dignity, or quality soever he be, from

“ from the prince to the lowest person in England. And the consent of the parliament is taken to be EVERY MAN’S consent.” Here is the doctrine of *Universal Suffrage* laid down in words as strong as the English language can afford. It was then to repair these ravages which time, whom my Lord Bacon terms the greatest INNOVATOR, had occasioned, that the British Convention sat; it was not to deform our constitution, but to restore it; it was not to promote, but to prevent its destruction, that we assembled. Besides, Gentlemen, if the principle which Mr. Locke again states (see book on Government, p. 236.) be just; “ that the preservation of property being the great end for which man enters into society,” it necessarily supposes and requires, that the people should have property, without which they must be supposed to lose that by entering into society, which was the end for which they entered into it; too gross an absurdity for any man to own. Men, therefore, in society, having property, they have such a right to the goods, which by the law of the community are theirs, nobody hath a right to take their substance, or any part of it from them, without their own consent. If such then, Gentlemen, is the principle which ought to regulate the intercourse between man and man in the common affairs of life, by how much more ought that principle to be observed by the legislature itself, to whom the most sacred of all trusts has been committed, and whose breach of any sound and salutary principle will be the more criminal, in proportion as such breach will be more extensively mischievous?

These are the principles of a man, who has a long time deservedly passed for one of the greatest masters of reasoning which England ever produced; who wrote in express vindication of the Revolution, and who afterwards held a place under King William (and would to God places had been always as worthily bestowed!) until he went to receive the final reward of his labours, from that Being, who will always confer it upon those who deserve it well. Gentlemen, it is worthy of remark, that, not only speculative writers upon government, but writers upon municipal law, Sir William Blackstone himself, a judge, should lay down the same principle, not in express terms indeed, but, as you will see, very strongly by implication. He says, “ In a free state, every man “ who is supposed a free agent” (and unless a man is incapacitated by crimes or insanity, every rational being may be so denominated) “ ought to be in some measure *his own governor*.” See *Black. Comment. octavo edition, page 158*. Now, if words have any meaning, what does this establish, but the doctrine of UNIVERSAL SUFFRAGE? For I know of no other definition of liberty, than that those who are bound by the law, should have a share in the making of it, either personally, or by deputy; and no other idea of slavery, than that state in which men are governed without their consent. Men who make laws for me, may indeed impudently tell me that I am free, for men may lie;

but unless I have some share in the appointment of those who are to govern me, I can, in no sense, be said to be my own governor; but on the contrary, have no more concern with the government of my country, than I have with those of Turkey or Morocco. Now, if the strict observance of this principle be necessary to give government a *moral right* to take away the *property* of the subject, in how far greater degree should the same principle be observed, as alone constituting a solid ground of authority, which can empower the legislature to frame laws, for a breach of which men are to be deprived of their lives?—It has been said also, that the plan of UNIVERSAL SUFFRAGE is visionary and impracticable. But this observation, if true, though it may mark the plan itself as absurd, must necessarily discharge from blame all those who have proposed it. For a non-entity, like a phantom, is not to be dreaded, and a plan that is attended with no danger, is certainly no object of legal prosecution. No, Gentlemen, our Creator, I am confident, has placed every thing that is valuable, every thing that is necessary for our happiness, within the grasp of human attainment. If then we should wantonly indulge wishes, and pursue objects, which are neither proper for us nor attainable, the true and only punishment should be (as it must be) the frustration of our hopes, and the anguish of our disappointment. If like children we cry for the moon, like children we should cry on.

But, fortunately for me, Gentlemen, my experience enables me to give a flat contradiction to the position advanced. I myself resided, during four years, in a country where every man who paid taxes, had a right to vote; I mean the commonwealth of Pennsylvania. I was an eye-witness of many elections which took place in Philadelphia, the capital of the state, an industrious and populous city, and can safely assert, that no one riot ever ensued. For, in truth, Gentlemen, the representative had no interest distinct from his constituents; the office which he undertook was rather a burthen than a benefit, and as the government was too poor to purchase, and the people too virtuous to barter away their liberties, (even if the case had been otherwise) so the deputy, though he had every opportunity to serve, had no temptation to sell his constituents. What then has been found by experience to be wholesome food for Americans, can never prove hurtful or poisonous to Britons, the parent stock from whom Americans are descended.

Gentlemen, I am aware, that every practice and institution is a one defensible upon its own intrinsic merits, and the reason of the thing; yet the adoption of any principle, by men eminent for virtue and learning, is certainly no small presumption of the soundness of the principle itself. Gentlemen, Sir William Jones, a name too distinguished in literature to derive splendour from any encomiums I can bestow upon it, and who has acted as a judge for more than twelve years in India, previously to his departure published a tract,

in which he vindicated the doctrine of *Universal Suffrage*. At a very early period of my life, I was honoured with the friendship and patronage of this gentleman, and I am sure he would deeply feel, even after this long separation, any calamity which might befall me; a calamity (if it be one) certainly, not altogether, but in some measure, perhaps, produced by conversation with those whose practices were pure, and whose principles I conceived to be just, and who were therefore objects of reverence among men. Yet this very gentleman, at this very period, holds an office of great trust and great emolument in his Majesty's important settlement of Bengal, and unseals those sacred fountains of justice which gladden and refresh fifteen millions of men.

Gentlemen, having now proved to you that the principles of which I am accused must be, in fact, the principles of all good government, and that they have been supported by the greatest of all human authorities; I shall now prove, I trust, equally to your satisfaction, from incontrovertible historical documents, that they are also congenial to the spirit of our constitution.

Gentlemen, Montesquieu has told us, that the rudiments of our excellent constitution are to be sought and found in the woods of Germany; where, as Tacitus informs us, *all were free*, and where all were entitled to deliberate upon matters of national importance. No proposal could pass into a law, binding upon the people, which had not been approved by the people.

"*De Germania. De minoribus rebus PRINCIPES consultant, de majoribus OMNES. Ita tamen ut ea, quoque, quorum penes plebem arbitrium est apud principes PROTRACTENTUR.*"*

Gentlemen, in the earliest stages of society, when commerce was scarce budding, almost every inhabitant held a certain portion of land: and as land alone, in those days, was the fund from which taxes were raised to support the expences of government, so every land-holder (of which description was almost every member of the community) had a right to vote. Squire, in his view of the Anglo Saxon Government, a book of very profound research, (Gentlemen, Squire was Archdeacon of Bath, and afterwards Bishop of St. David's, and it is certainly no part of the Episcopal function to disseminate seditious doctrines among the people) Squire tells us, the affairs of the country were, at that time, conducted by the king, the witenagemot and the myclegemot. The witenagemot, or king's court, was an assembly of the best and the wisest men in the nation, corresponding to what our privy council is, or (I beg pardon of our ancestors) corresponding to what a privy council *ought* to be. The myclegemot, on the other hand, were a body chosen by the *people at large*,

* I have adopted the reading of Colerus and Acidalius, in preference to the common reading, which is *pertractentur*, and which corresponds to the *προβουλευεσθαι* of the Greeks, the proper business of the ancient senates.

corresponding to what the principles of our constitution suppose the parliament should be, a real representation of the people. "The Witenagemot (says Squire, see p. 190) were persons supposed to be best acquainted with the exigencies of the public. "It was their duty to *propose* what they thought most expedient "for the good of the *whole*; the new laws, especially, seem all "to have been drawn up and prepared by them, though nothing "which they did of this kind was obligatory to the community, "until it had received THE GENERAL CONFIRMATION." How was this general confirmation to be brought about, but by the vote of every *freeman*? a term applicable to all, except such as were in a state of personal slavery, who upon the Norman conquest were denominated villains; a set of men, corresponding to what, your lordships well know, the civil law calls *adscriptitii glebæ*; but who have ceased to exist in this country for near a century and a half; villanage being formally abolished by an act of parliament passed in the early part of the reign of Charles II. As it is strictly conformable to the spirit of our constitution, to construe all laws and customs in *favorem libertatis*, so personal slavery being now done away, and all British citizens being *freemen*, they are of course entitled to all those privileges which even the express letter of our early constitution conferred upon them as described, exercised, and enjoyed in their fullest extent.

Gentlemen, this was the form of government, which in a very early period prevailed; these were the principles which flourished during the reign of the Great Alfred, than whom never lived a purer legislator; and who, Hume, in express terms, tells us, approached as nearly to perfection as the infirmities of human nature would admit. If then, Gentlemen, these doctrines are conformable to the universal principles of justice and of reason, if they are expressly maintained by so respectable an authority as that of Mr. Locke; if they are implicitly assented to by so respectable a judge as Sir William Blackstone, (for the words, "every man is his own governor," mean that, or they mean nothing) if they have been publicly avowed by Sir William Jones, who, in point of learning, yields to no man to whom this kingdom has given birth, since the days of Lord Bacon; I cannot, surely, be charged with innovation and a design to disturb the public peace, for having circulated principles that have long been current, and which men of so distinguished reputation have acquired fame in supporting.

Gentlemen, I know much nonsense has been talked about virtual representation: but if representation be not real, it is no representation at all. I wish to God that the supporters of virtual representation would impose on us only virtual taxes, and inflict virtual punishments; but this they will not do: therefore, till that event, I do not think they have any right to more than virtual taxation. Gentlemen, I lay down these principles as subjects for your consideration merely; for I hold that every inconvenience

venience is to be borne for the preservation of the general peace. But whenever governments act directly contrary to the end for which they were instituted; when, instead of being the guardians, they become the oppressors of our liberties, common sense, common justice, and express law authorities, will tell us they are no longer objects of obedience: and this our ancestors confirmed, when they established the Revolution.

Gentlemen, I am not so well skilled in the historical antiquities of Scotland as I could wish, or, perhaps, as it was my duty to have been; but I beg you will carry this principle continually in your minds, that if such have been the privileges of England, and if this country is entitled, by the articles of Union, to the same privileges, I see no offence in wishing, and attempting to effect, that Scotsmen should be admitted to a participation of the same rights. I have, in my hand, a book of the late Dr. Stuart, who has written upon the public law and constitution of Scotland, in which are several passages that favour, very much, the doctrines I have laid down, and which, at the same time, prove a strong similitude between the ancient Scottish and English constitutions. "In the body of the laws of William the Lion, who began to reign in the year 1165, are these notices: *Assisa regis Willielmi, facta apud Perth, quam episcopi, abbates, comites, barones, theani, et TOTA COMMUNITAS REGNI, tenere firmiter juraverunt.*" "An assize of King William, made at Perth, which the bishops, abbots, knights, barons, thanes, and whole community of the kingdom, firmly swore to maintain." Cap. 7. And again, "*statuit rex per concilium et assensum TOTIUS COMMUNITATIS SUÆ.*" "The king hath enacted by the advice and consent of his whole community." Cap. 4. The preamble to the laws of Robert I. is also in these words, "*habitoque solemniter tractatu, cum episcopis, abbatibus, prioribus, comitibus, baronibus, et aliis magnatibus, DE COMMUNITATE TOTIUS REGNI ibidem congregatis, super variis et arduis negotiis,*" &c. "The constitution was greatly treated of with the bishops, priors, knights, barons, and other great personages of the whole community of the kingdom, at the same time gathered together, upon various and arduous affairs." So when John Baliol told Edward I. that he "*could not and dared not* express any sentiment which concerned his kingdom without consulting his people," he meant something more than the sanction of the prelates, the nobles, and the tenants in capite. *Ryley Placit. parl. p. 159, an. 1293.* And Dr. Stuart, that profound and laborious antiquarian, positively says, that "the expression of Baliol is easily comprehended, and had a reference to the whole kingdom." (*See Observations concerning the Public Law and Constitutional History of Scotland, p. 334.*) The expression Magnates, or great men, which is found in the statute of Robert I. that I have just quoted, may, I am aware, be supposed to apply only to persons of higher rank, yet, upon examination it will, I am confident, be found strictly applicable

applicable to the representation of the *people*, the *totā communitas*. For in England it appears exactly in the same sense; and we know, both from Rymer and Pétit, that in that kingdom, *noble*, *most noble*, *most illustrious*, *most precious seignors*, *monseignors*, and *sirs*, were appellations of the *Commons*. Here, then, is a proof, that in the early period of the history of Scotland, the *whole community of the kingdom*, (*i. e.* every free man) not collectively, no doubt, but *representatively*, were concerned in passing those laws, which they also swore they would firmly maintain.

Gentlemen, I cannot account for this coincidence between the constitutional forms and principles of England and Scotland, at so early a period of our histories, without supposing that they must be congenial to the natural order of all government itself; and that these deviations which have since been made by the ravages of time, have been the abuses of the constitution, and not the principles of it.

Gentlemen, the third charge against me is that of having urged arguments in support of annual parliaments; though I have heard from very respectable authority, no less, I believe, than one of the learned lords upon the bench, that he did not conceive there was any material objection to such a measure. He gave indeed no decisive opinion upon it; but he seemed to think, that a mere peaceful discussion of the subject of annual parliaments would not render a man an object of criminal prosecution by the laws of this country. But I go further; I apprehend that annual parliaments may be supported as well by the reason of the thing, as by ancient usage; and upon this plain principle, that power long continued is too apt to corrupt the disposition of the possessor, and that a people, when they intrust so sacred a charge as that of making laws, (the abuse of which may work a destruction of their lives, and the ruin of their property) cannot be too vigilant in observing the conduct of those to whom they delegate this trust, nor too quick in recalling them whenever they abuse it. By long parliaments we lose the great advantage which our constitution has provided, of curing the evil before it grows confirmed and desperate, by the gentle method of chusing a new representative; and the *people* are by consequence reduced to have no other alternative than that of submitting or resisting; though submitting will be as grievous, and resistance much more difficult when the *legislature* betrays its trust, than when the *king* alone abuses his power. Besides, short parliaments, should they become suddenly corrupt, carry with them their own corrective; for, "leeches, and other blood-sucking worms," as Davenant well observes, "are engendered in standing pools; flowing waters do not corrupt nor breed so many insects."

It is a melancholy fact, but it is a very certain one, that parliaments have generally been dangerous in proportion as they have been long.

The

The long parliament (peculiarly so denominated on account of the length of time which they sat) in the reign of Charles I. I believe were instrumental in bringing the head of that unfortunate monarch to the block. I cannot, therefore, believe, that long parliaments can be supported by gentlemen, who avow, that their intention is to defend monarchical principles; when a long parliament was that which overturned the monarchy, and beheaded the sovereign. The House of Commons, which sat for so long a time in the reign of Charles II. were so notorious for their profligacy, that Rapin assures us, "one half of them were bribed by the Court of France;" probably, the other half by our own.

Gentlemen, I am well aware that it may be said, that if elections were more frequent, greater tumults would ensue. I apprehend the reverse of this position is exactly the truth; for, it might be worth the while of a member of parliament to get elected under the corrupt influence of the Minister, when he is in for seven years, though not when he is in only for one; for, knowing that he must at the end of a year give an account to his constituents, he would take greater care how he executed the important trusts committed to him, than if he was delegated for a longer time. If then, Gentlemen, the object of getting into parliament would not be such as to make it a stronger inducement for persons, in general, to become members, of course tumults would not so frequently ensue at general elections, as, to our misfortune and disgrace, they do under the present system.—In support of this doctrine of annual parliaments, I am fortified by the authority of a gentleman who is, and who has long been, a Member of the House of Commons, I mean Mr. Alderman Sawbridge, who, wearied out at last by continual disappointments, has abandoned his project, not from conviction, but despair. The treasury bench, indeed, *solito more*, "according to custom," never made Alderman Sawbridge's proposal the subject of discussion; but, as often as the motion was made, coolly negatived it, by the *dead eloquence* of numbers.

Gentlemen, parliaments, you must recollect, were annual, till the time of Henry VIII. He was the first who broke in upon the custom of annual parliaments; and he, I trust, will never be brought forward as an authority; as he was a *monster*, of whom it was emphatically said, "that he spared no man in his wrath, nor woman in his lust;" and who distinguished himself, during a long and bloody reign, by oppressing his subjects, and beheading his wives. Besides, Gentlemen, as the great object of the SOCIAL INSTITUTION is to call forth, to their fullest exertion, the aggregate faculties of all those who are members of it, for the purpose of producing the great possible sum of happiness; so, if this custom of annual parliaments were revived (for they are not innovations) it would introduce many more into public business, who are now excluded from it, and whose minds being

inflamed and invigorated with a love of glory, and a passion for promoting the public weal, would rouse themselves from that supineness which invites oppression, and which is too often the bane and destruction of nations. For, under the present system, many persons having scarcely any concern with the government, except as they are called to support it by the payment of taxes, they either grow careless and indifferent about the measures which it adopts, or seek to better their condition by recourse to violence.

Gentlemen, it appears that such also was the law of Scotland; for I find by a statute passed in the first parliament of James VI. in the year 1587, "it is ordained, that the commissioners of all the schirresdomes of this realme be elected be the freeholders forefaids, at the first head court after Michaelmas *zeirly*."* It is, therefore, no new doctrine in Scotland any more than it is in England. And I find by an article of the CLAIM OF RIGHTS that the Old Scottish Constitution was to be restored; which claim of rights certainly took place after the passing of that act, and which act constitutes an essential branch of the Scottish Constitution.

A very eminent writer, Gentlemen, upon annual parliaments, begins his book with this very remarkable observation, "*where annual election ends, slavery begins.*"† And he states precisely the reasons that I have stated to you, that if power continues long in the same hands, it has a tendency to corrupt, and that it should not only be delegated for the benefit of those over whom it is exercised, but, that it should also be delegated in such a manner as to prevent any *permanent*, if not *immediate* abuse of it.

Gentlemen, I now come to the period of the Revolution, an event which established our constitution, (it is said) a constitution, however, which weak men, I fear, praise without understanding, and which wicked men violate while they praise. The English delegates have been charged with an intention of having come to this country for the purpose of destroying those advantages and benefits which the subjects of the two united kingdoms derived from that glorious event. If the charge could be brought home to us, it would not be merely a transportation to Botany Bay, which ought to be our fate, but an execution at the gallows. But the charge is totally unfounded, and I am surprised that it has been brought forward by persons in particular situations; since that charge, like many others, will, upon examination, recoil on the heads of those who made it. I will shew you, Gentlemen, that the benefits of the Revolution have been done away, but not by us; for it was our purpose to revive them. Has it not been proved, by Mr. Wharton, in the House of Commons, in a speech

* Anglicé *yearly*.

† Essay on the British Constitution.

to which no answer was given, that not one single vestige remains of the wholesome regulations which the Revolution produced. I know that it is treading over beaten ground; but, I trust, you will not think your time uselessly consumed, when it goes to establish a point, upon which my guilt or innocence materially depends. I shall now read to you extracts from a pamphlet, of which I am not ashamed to avow myself the author, entitled, "Address of the British Convention to the People of Great Britain," and which was drawn up by me at their express direction:—"The spirit of Alfred again arose to animate the councils of his regenerated country. Scotland, which had long groaned under the denomination of an austere and insolent aristocracy, was called in to share with her brethren of England, the blessings of freedom which she had contributed to produce. Placemen and pensioners were excluded *by law* from the House of Commons, lest a sense of their dependence on the crown should, as it must, make them forgetful of their duty to the people. Parliaments were not to sit for more than three years, since power long continued is commonly abused, as those entrusted with it are too prone to forget the hand which gave, and the purpose for which it was given. Ministers were made answerable for the counsels which they afforded, and the throne, now guarded by the vigilance, and sustained by the love of all its subjects, was no longer a sanctuary for the treachery of its servants.

"Friends and Countrymen, these wise and wholesome provisions, which were once the boast and security of Britons, now form only an object of melancholy remembrance. They are buried in the same sepulchre with the bodies of our ancestors. In many parliaments, which have sitten since the Revolution, placemen and pensioners have been so numerous, as to controul the will, while they violated the rights of the people. Since that time, parliaments have more than doubled the term of their duration, not by an appeal to the voice of their electors, but by the arbitrary effort of a self-constituted authority. Judging from this specimen, and drawing the natural inference, that what *has* been done *may* be done again, we know of no barrier or security, at present existing, to prevent a future parliament from enlarging the term of their duration to twenty years, or, if it suits their interest or ambition, from declaring themselves perpetual. THE RESPONSIBILITY OF MINISTERS HAS BECOME AN EMPTY NAME. Crimes which, during former periods, would have called down upon the heads of their guilty authors the just vengeance of an injured nation, have been only a passport to opulence and power. The people of Britain have seen the very ministers who dismembered the empire, squandered a hundred millions of money, and poured out the blood of more than a hundred thousand of their fellow-subjects in a cruel and desperate contest, again recalled into the confidence

“ of their sovereign, and loaded with the honors and emoluments
“ of the empire.

“ Thus you behold, that the spirit of those regulations, which
“ the Revolution produced, is fled, and what remains is only the
“ dead carcase which encumbers the statute book. We now ask,
“ who are those, that are guilty of innovation? Is it that band
“ of hirelings, to whom corruption is food, or is it we, who
“ wish only to restore the principles of our Saxon ancestors,
“ which gave us freedom, and that sacred compact which confirmed it at the Revolution? If the foundations of the throne
“ are shaken, are they shaken by us, who seek only to replace
“ it on those solid grounds on which it was originally erected; or,
“ are not they rather shaken by those who, with hollow professions of loyalty in their mouths, have sought to establish the
“ authority of the crown, by the renovation of those practices
“ which banished the Stuarts, and by the violation of those principles which elevated the Brunswicks? We cherish the constitution of our ancestors, not as a speculative bauble, but as a
“ practical good; and we contrast, with an honest pride, our
“ own sincere admiration of that system, with the fawning treachery of its real foes—of men, whose praise is profanation, and
“ whose external homage is concealed blasphemy.”

Yet, notwithstanding, the present system of government is a libel upon our real constitution; the word *constitution*, *constitution!* is rung in our ears with unceasing perseverance. This is the *talisman* which the enemies of reform wield over the heads of the credulous and the simple; and, like old and wicked enchanters, having first bound them in the spell, take advantage of the drowsiness which their arts have created. But to hear placemen and pensioners talking of a constitution, when their whole lives are one uniform violation of its principles, is like a monk preaching population, or a farmer general commiserating the distresses of the poor.

Gentlemen, there is one particular error, into which all those who have enumerated the regulations which took place at the Revolution have fallen, and of which, until a few days past, I myself was not conscious. Having no other object but truth, I beg leave to state it to you. The bill for excluding placemen and pensioners, though it passed in the reign of King William, was not to take effect until the accession of the house of Hanover. In the intermediate period, indeed, that act was repealed; but does not the passing of the act, at the period of the Revolution, clearly prove that we are entitled to its revival, now, when the house of Hanover is sitting on the throne, in consequence of that very revolution; and when it may be safely inferred, that the act alluded to, and their compliance with its principles, was made a condition of their subsequent elevation?

Gentlemen, the public prosecutor has, in vague and general terms, charged me with an intention of overturning the constitution;

tion; but I now call upon him, in terms *particular* and precise, to declare whether the system under which he acts, has not rooted out every valuable principle, every wholesome regulation, which the revolution produced; whether those regulations are a *living spirit*, or a *dead letter*, whether *placemen* and *pensioners* do not now swarm around the treasury bench, like vermin on the banks of the Nile. And even when, by a mockery of our understandings, they vacate their seats, for a short time, for what is called the Chiltern Hundreds, are they not again elected?—elected did I say? No! again nominated by the peer who originally sent them, in a manner as peremptory as the king; by his Congé d'Elire, nominates a bishop! This, Gentlemen, is not idle declamation; it is solid fact, and incontrovertible proof. I therefore call upon you, my countrymen, in your turn, and ask you, how you can conscientiously lay your hands upon your hearts, and solemnly declare, before God and the world, that I have attempted to overturn a system, of which it has been proved to you not a vestige remains? Do you not know, that those who instigated this prosecution, when called upon to revive these principles of the constitution, as they could not answer the arguments of the patriot Wharton, preserved a sullen and criminal silence? What then must you think of a state prosecution, which rests for support on so sandy a foundation; or what rather must you not think of the conduct of those men, who, while they are heaping upon my devoted head, the charges of treasons, conspiracy, and sedition, can give the real scandal of so notorious and wilful an insincerity?

Gentlemen, the triennial bill has long been repealed; but why not now revive it;—since the reason on which it was repealed, has long since ceased? For, if you will take the trouble, Gentlemen, of looking at the parliamentary debates of that period, not even the rankest ministerial hireling attempted to defend the measure upon any other principle than that of *temporary expediency*; as it was thought unsafe to expose the country to the tumult of a general election, when a rebellion was raging in the heart of the kingdom. But now, it seems, the septennial bill has become as much a part of our government, as the malt-tax, the mutiny-bill, and a standing army; which when first passed, it was declared, were only to be temporary, and, like the septennial bill, were only submitted to on the fatal plea of a state necessity. “The responsibility of ministers, it is stated, has become an empty name.” Would to God it were false; but is not the fact as melancholy as it is true? Do not those ministers who conducted the American war (an event which shook these kingdoms to their deepest foundation) conduct the present war? Did not Lord North, who was prime minister during the whole of the war, enjoy, for many years after the war was ended, a sinecure place of 5000l. a year (now indeed devolved upon Mr. Pitt?) And do not his family, at this very hour,

hour, receive from the country a considerable income, granted during their father's ministry, by way of reversion, though I could never learn that they have earned it by their services?

Gentlemen, the right of our meeting in convention by *delegation* has been expressly denied by the Solicitor General, and he (I am sure if I mistake his meaning, it is not purposely, and I beg he will interrupt me) I think he denied our right to meet by delegation. Had we met as the united delegates of all Britain, we should have arrogated a title to which we had no right. But we did no such thing: we met, only as the representatives of some thousands, who delegated us for a purpose which we knew to be constitutional; and we conducted ourselves in a manner firm, but peaceable.

If, in the common *business* of life, a man can receive a power of attorney to manage the pecuniary concerns of another; so I trust he is authorised to carry into execution, for the benefit of his fellow-creatures, affairs of much greater concernment; otherwise you deny him, in fact, that privilege, without which all others are nugatory, I mean the essential privilege of self-preservation. I am happy, however, that the charge is brought forward, as a ground of criminality; inasmuch as the meeting, which delegated us, was publicly held in an open field, in the face of day, in the presence of many thousands of our fellow-citizens, who were calm and attentive spectators of what was passing, and in the presence, even, of five hundred peace officers, some of whom were members of our association, and others sent, by the secretary of state, to watch over our proceedings and to make their report. Of the latter, I can assert from my own personal knowledge, many became converts to our doctrines; which, as they were founded in reason, and have no other object than the general welfare of mankind, must make converts of all who have not an interest in opposing what it is their duty to practise. All these things, Gentlemen, were suffered to pass under the eye of the police, under the very beard, if I may so say, of the secretary of state himself, who is, *ex officio*, the great conservator of the public peace; and in the very heart of the capital of our country, which is, or which ought to be, the great sanctuary of the law.

Gentlemen, the publicity of our conduct was certainly a proof that we deemed it to be innocent. And if the officers of state deemed it to be otherwise, upon what principle can you excuse their supineness and inactivity in not dispersing the meeting, and taking up the delegates; since to *prevent* crimes is far better than to *punish* them, and far more the duty of the civil magistracy, unless in "the pride and naughtiness" of their hearts, they sought to cherish the seeds of a state-prosecution against men whom they had marked out as the victims of their resentment? Their conduct, then, we can only look on as TRAPS TO ENSNARE US. Gentlemen, if what I have stated be well founded, we are entitled to

to draw these melancholy inferences; that the articles of the Union are violated in this business, and that there is *not*, as the fourth article avers there shall be, "a communication of all rights and privileges between the subjects of both kingdoms;" since a man may commit, with impunity, on the other side of the Tweed, what if he crosses it, he shall be transported for; that an unity of the principles of action, an equal and undistinguishing law, operating either to the punishment or security of all citizens alike (and which is the great badge of *freemen*) does not prevail among us; but that the code of the two countries is an heterogeneous mass, like Nebuchadnezzar's image, made up, partly of clay, and partly of brass. These facts, it would be like burning day-light to prove, and he that runs may read them.

Gentlemen, the great and distinguishing mark of man is reason. If we are debarred from the privilege of exercising this invaluable faculty, we are reduced to a situation, I will not say on a level with the beasts of the field, for many of them, like ourselves, are social and gregarious, and have the power (from the exercise of which the laws of this country have not yet debarred them) of communicating their ideas, though not indeed by articulate sounds; if we are debarred from this privilege, then, I say, we are reduced even lower than the brutes, and put upon a level with oysters and other shell-fish, whose powers of motion are limited to gape and receive, what the bounty of nature, unlike that of the governments of the earth, which rather take than give, confers for their support. The constant theme of the supporters of government is the excellence of the British Constitution. Willing as we are to admit the position, it is certainly not unreasonable to ask how is this excellence to be ascertained? It is surely not a matter of instinct; consequently, can only be ascertained by the exercise of our reason. If you deny us this privilege, or, what is nearly the same, punish us for the use of it, your government, I aver, stands precisely upon the same foundation as the governments of Turkey and Algiers; for the Viziers, the Bashaws, and other state officers of those arbitrary governments, so long as they are enjoying their salaries, and fleecing the people, will assert, no doubt, with equal confidence, that those governments are the best, and that all attempts to examine, or controvert by reason, the principles on which they are founded, are highly seditious, have a tendency to disturb the public peace; and are, therefore, deserving of the punishment of the law. If you interdict the free use of our reasoning faculties on matters of government (and they do no more) you and they are exactly on a par; and if you do not, the dispute between us is at an end, as you concede the very point for which we are contending.

Gentlemen, it is a very melancholy consideration in the present times, and it is with a mixture of grief and astonishment I speak it, that the very same kind of arguments, which at the dawn of the Reformation were made use of by the Catholic clergy,

clergy, who were endeavouring to hold the people in the fetters of superstition, are now made use of by those very persons, who, for purposes equally selfish, are repressing the progress of political information. Cardinal Bellarmine, a man eminent for learning, but vehement in his opposition of religious reformation, declaims, particularly against the impious attempt to diffuse knowledge among the lower classes; and to lay open *the Holy Scriptures to vulgar eyes*. Religion in those days, it seems, like government in the present, was to be believed and confided in without being examined. Oh! preposterous insult to the dignity of human reason! Oh, blasphemy against the Author of all goodness! As if the Parent of knowledge were capable of giving a revelation to his creatures, to be adopted for ages by millions of reasonable beings, that would not stand the test of human inquiry. The true religion, like all free governments, appeals to the understanding for its support and not to the sword. All systems, whether civil or moral, can only be durable in proportion as they are founded on truth, and calculated to promote the good of MANKIND. This will account to us, why governments suited to the great energies of man have always outlived the perishable things which despotism has erected. Yes! this will account to us, why the stream of time, which is continually washing the dissoluble fabrics of all superstitious impostures, passes without injury by the adamant of Christianity.

It is worthy of remark, Gentlemen, that in our days, the great champion of despotism has not scrupled to borrow his favourite phrase from a monkish writer, who was an enemy to the Reformation: Knighton, an abbot of Leicester, who wrote at the beginning of the Reformation, when he is deploring the publication of the Scriptures to the common people, has this remarkable expression, "Pity it is, that this evangelical pearl should be trodden down under the foot of *swine*." Mr. Burke laments that "learning should be trodden down under the hoof of the *swinish multitude*." In justice to the mouldering monk, I must, however, observe, that the expression, considered merely as an expression, is truly beautiful; whereas, Mr. Burke's phraseology is as destitute of taste and congruity, as it is devoid of benevolence.

But, Gentlemen, if you take the principle of the thing, you will find that every nation has a right, not only to preserve the form of government, which is actually established; but, also, by the peaceful and calm operation of reason, to improve that form of government, whatever it may be. If you deny this position, you must say, that our ancestors had a privilege which we have not a right to exercise: an absurdity too gross to deserve a serious refutation; since all men being born equally with the same rights, through every succession of ages, no generation can annihilate or curtail the rights of a subsequent one. The *moral* right, indeed, of altering any government must always depend upon

upon the particular circumstances of the case, but the *abstract* right is always vested in the PEOPLE; of the moral exercise of which (however they may occasionally abuse it) they must be, and they are, the proper and ultimate judges. What, therefore, the Solicitor General has said, that we have now, *no right* to frame or alter the constitution, but that it is our duty implicitly to obey it, since it was established at the Revolution, and transmitted to us by our ancestors, I deny to be found reason, or salutary political doctrine. In adopting this position, I am fortified by the authority of Algernon Sydney, than whom a purer spirit never appeared before the tribunal of his Maker: "Laws and constitutions (says he) ought to be weighed, and whilst all due reverence is paid to such as are good, every nation may not only retain in itself a power of changing or *abolishing* all such as are not so, but ought to exercise that power according to the best of their understanding, and in the place of what was either at first mistaken, or afterwards corrupted, to constitute that which is most conducive to the establishment of Justice and Liberty. But such is the condition of mankind, that nothing can be so perfectly framed as not to shew some testimony of human imbecility, and frequently to stand in need of reparation and amendments. Many things are unknown to the wisest, and the best men can never wholly divest themselves of passions and affections. By these means, the best and wisest are sometimes led into error, and stand in need of successors like to themselves, who may find remedies for the faults they have committed; and *nothing can or ought to be permanent but that which is perfect*. No natural body was ever so well tempered and organized, as not to be subject to diseases, wounds, or other accidents, and to need medicines, and other occasional helps, as well as nourishment and exercise; and he who, under the name of *innovation*, would deprive nations of the like, does, as much as lies in him, condemn them all to perish by the defects of their own foundations. Some men observing this, have proposed a necessity of reducing every state, once in an age or two, to the integrity of its first principles: but they ought to have examined, whether that principle be good or evil, or so good that nothing can be ever added to it, which none ever was; and this being so, those who will admit of no change would render errors perpetual, and depriving mankind of the benefits of wisdom, industry, experience, and the right use of reason, oblige all to continue in the miserable barbarity of their ancestors, WHICH SUITS BETTER WITH THE NATURE OF A WOLF THAN OF A MAN." Sydney on Government, quarto edit. p. 405.

Gentlemen, we all know that the human mind is suffered to be active in the improvement of those civil arts, which conduce to the comfort and happiness of human life, I mean the mechanical arts; and shall the grand art of all, that of making men secure in the enjoyment of their acquisitions, I mean the art of government,

be alone neglected, alone compelled to be stationary? But abandoning the principle and reason of the cases, the facts themselves contradict the assertions of our adversaries. Our constitution has never been stationary. It has been in a gradual state of improvement; and a writer to whom this country had the honour of giving birth, I mean Hume, expressly tells us, that the history of England is little else "than a history of reversals." Do we not know that acts of parliament are frequently set aside, and others directly contrary passed in their stead? By the treaty of Troyes, after the battle of Agincourt, which was regularly ratified and confirmed, and no opposition made to it, either by France or England, the two kingdoms were for ever unrepealably united under Henry the V. Where is now the unrepealable union between England and France? Oaths were heaped upon oaths to bind the nobility of England never to violate any of the constitutions of Richard II. as Rapin assures us (vol. i. p. 245) where are his constitutions now? During three successive reigns, the national religion was three times successively changed by act of parliament. A more complete tyranny cannot be conceived than what William the Conqueror established over the people of England. Yet but a few reigns pass away, and the barons establish a legal right to redress their grievances by force. Magna Charta says "*Distringent et gravabunt nos*," &c. The barons complaining, and failing of redress, shall *lawfully* distress and agrieve the king all manner of ways, as by taking his castles, land possessions, &c. till redress is granted. After the Restoration comes the corporation act, and declares all resistance unlawful. The same doctrine is preached in the act of attainder, and militia acts. Not thirty years after this comes the Revolution, and abolishes the whole system of passive obedience and non-resistance; sends the whole royal family a-packing, and brings in the house of Nassau. The liberty of the press was taken away by the 13th Charles II. The liberty of petitioning was abolished the same year; and then the corporation charters were taken away. All these were restored by the Bill of Rights. Do not then, Gentlemen, these facts prove Mr. Hume's words, "That the history of England is little better than a history of reversals?" There are some men, I know, who see a spectre in every bush. Lord Nottingham, when the Union was in agitation, declared that the changing of the term England to that of Great Britain would subvert all the laws of England; and in our own days there are of the same description of men, of whom we may always say, that the word innovation, to use Mortimer's expression, "has frozen up their souls like fish in a pond." After all, the most useful discoveries in philosophy, the most important changes in the moral history of man, have been innovations. The Revolution was an innovation; the Reformation was an innovation; Christianity itself was an innovation.

Lord Justice Clerk. You would have been stopped long before this, if you had not been a stranger. All that you have been
saying

saying is Sedition ; and now, my Lords, he is attacking Christianity.

Lord Henderland. I allow him all the benefit of his defence ; but to compare the present situation of this country, with what happened at the Revolution, when the forms of civil government, and the liberties of the subject were done away by the infringement of all law ; or with that period, in which the sovereign is said to have forfeited his life ! I cannot sit here without observing, as was done in England, in the year 1745, when the rebels were tried ; I cannot sit here, as a judge and as a man, without saying, that is a most indecent defence. It is my duty to observe this ; but I am for the pannel going on in his own way.

Mr. Gerrald. I conceive myself as vindicating the rights of Britons at large ; and I solemnly disclaim all intention of attacking Christianity. I was merely stating the fact.

Lord Justice Clerk. Go on in your own way.

Mr. Gerrald. I think I may be allowed *that*, at least.

Lord Justice Clerk. Go on, Sir.

Mr. Gerrald. I should have been going on, if your Lordship had not interrupted me.

Gentlemen, the great charge against me is, that I came down here for the purpose of carrying on reform ; and if I am not allowed to go into a vindication of these general principles, and an enumeration of particular abuses, I may be *condemned* indeed, but I certainly am not heard. I was only arguing that the supposed principles charged upon me were such as have been adopted by the best and wisest of men ; and if *they* can shew me, from higher authority, that they are unconstitutional, I would instantly become a convert to their doctrines ; but reason alone, and not assertion can convert *me*. I shall now endeavour to prove to you that our object was perfectly constitutional.

Gentlemen, by a return of the representation in parliament, an object which we feel equally interested in with all other British subjects, given us by a society called the Friends of the People, many of whom are members of parliament, and, among others, the illustrious Sheridan (the brilliancy of whose talents can only be equalled by his disinterested attachment to the liberties of his country) it appears that in England 2611 persons return to parliament 327 members, and in Scotland 98 persons elect 15, and the remaining 30 are elected by about 1400.

This is not an adequate representation ; but a mockery of representation ; and therefore not such a representation as the original principles of our constitution intended, or as the Revolution was meant to promote. Surely, Gentlemen, it is not the semblance of a parliament that we want, not the mere *name* of a parliament, the *magistratum vocabula*, as Tacitus well expresses it ; but such a parliament as shall preserve our interests, and express our wills. If the court's governing without a parliament was formerly the object of our terror ; if its governing *with* a parlia-

ment is as justly the object of our wishes; its governing by a parliament is an infallible method, not only to compass, but give sanction to our ruin. With regard to the first of these governments, our terrors have long slumbered; for, while we so fully give, why should the sovereign take? But if ever the period should arrive, when the House of Commons should invariably answer to the calls of the crown, though they should be deaf to the cries of the people; that they should purchase on one hand, only to sell on the other; that instead of redressing grievances they should authorise them; instead of prosecuting malefactors, they should screen them; and instead of protecting and defending the rights of their constituents, they should perfidiously betray them; if ever such a period should arrive, I say, we might still amuse ourselves with the word constitution; but I hope itself would sicken, as the constitution, in fact, must be every where undermined, and at the first sound of the trumpet of despotism, like the walls of Jericho, would sink into a heap of ruins.

Gentlemen, I was not drawing any parallel, when the bench interrupted me, between the state of this country at this time, and the state of it at the Revolution; but I was laying down a principle, that if persons in any given period had a right to meet for the purpose of bettering their government, they had the same right at every subsequent period. The Revolution was carried into effect by open *force*, but here there was no idea of force, which, I trust, I shall be able to prove. In our meetings there was no idea of any force at all, and therefore, instead of drawing a parallel between the situation of the country at that time, and at this, or of inculcating the propriety of having recourse to force, we were doing directly the reverse.

Gentlemen, I shall now briefly examine the principles, which the report of my speeches in the convention attributes to me. It is there stated, that I said "no meeting of the people can be called a mob, if their deliberations be directed towards the public good; but if men meet for an opposite purpose, for promoting the misery or the destruction of the human race, though they sit down with crowns on their heads and sceptres in their hands, they are truly a mob."

These, gentlemen, I hold to be moral and self-evident propositions: that it is not the *possession*, but the *just exercise* of power, which should render it an object of reverence among men; and that the essential principles of vice and virtue are not altered by the practices of persons in high stations.—"*A motu justitia*" (says, St. Austin) *quid sunt regna nisi magna latrocinia?*" "If justice were laid aside," as this venerable father has well said, "the governments of the world would resemble dens of robbers; and men would follow only those who can inflict the greatest punishments, or give the greatest rewards." But since the reception of such opinions would be the extirpation of all that can be called good, we must look for another rule of our obedience; and

and we shall find that only to be the law, (I mean what Tully calls the *sanctio recta*) which being founded upon that eternal principle of reason and truth, whence the rule of justice, which is sacred and pure, ought to be deduced, and not from the depraved will of man, which fluctuating, according to the different interests, humours, and passions, that at several times reign in several nations, one day abrogates what had been enacted the other. This sentiment, then, just and reasonable in itself, can never be construed into a reflection upon the present government; unless you suppose that which I never asserted, namely, that it *is applicable* to the present government; in which case you must commit the very offence which you are called upon to condemn, and attribute those motives to the particular magistrates of our own country, which I only supposed might occasionally influence the conduct of many.

I am next charged with saying "were all mankind to assemble in public meetings, one of two things must follow; either they will behave properly or improperly; if properly, their meeting will tend to good, if improperly, it carries its own cure along with it. The people will be soon brought into a better method by a sense of self-preservation, by which they will correct the errors into which they have fallen." Than this sentiment, Gentlemen, I conceive nothing can be more innocent, or more strictly and logically true. By the "assembly of the whole community" I certainly did not mean what a learned lord, in his argument on the relevancy, erroneously, I hope not intentionally, stated to be my meaning, the meeting of all the people in their collective capacity, which would impede business, and give rise to tumults. No.—I meant the meeting of the people in their representative capacity—but, such a representation as should collect and express their wills, as really and truly as if they had been assembled in their *collective* capacity. A fair, full, and complete representation—not a delusive vision, an empty phantom, an unreal mockery. This I can also inform his Lordship was the only sense conveyed by my words, "*the great art of government is, that all should be governed by all*"—words, (which his Lordship thought proper to ridicule because he did not understand them) and which, besides their own intrinsic weight, have been adopted by wise and virtuous men, both in ancient and in modern times. "This, therefore, (says Sir William Temple, when speaking of the constitution of the ancient Germans, from which our own is, as we have seen, derived) is that constitution, which has been celebrated as the truest and the justest temper that has ever been found out between dominion and liberty; and it seems to be a strain of what Heraclitus said was the only skill, or knowledge of any value in politics, which was *the secret of governing all by all.*" (Sir William Temple, *Miscellanies* part ii. p. 255.) Surely, if ever there was a principle of plain sense, this

this is one : for who so likely to promote their own interest as the persons most concerned in it ? Who so eager to apply the cure, as those who feel most acutely the smart of the disorder ?

Gentlemen, I am further charged with having said, that “ if governments were to instruct the poor instead of hanging up their bodies on gibbets, the voice of the people would then be the voice of God.” Now, what do these words amount to ? Why, that since every government claims a *right* to punish, it is previously bound to instruct the subject in what he should do to avoid it. For, as the just powers of government, as we have before had occasion to observe, are derived from the people ; so no people either will delegate, or can have a right to delegate, to any set of men, the power of wantonly inflicting pain upon them ; which, undoubtedly, would be the case, if the subject could, without injustice, suffer the penalty of a law, even though he had not been previously told of its existence. I speak not now of those moral laws which pure native intellect enables us to discover, and which may be read, as Dryden says, without the *spectacles of books*, but merely of those positive regulations of society which mere human intellect alone cannot know to be breaches of duty, unless previously instructed. In these cases, then, to withhold instruction is, on the part of government, not merely the omission of a duty, but the commission of a crime ; and society sins against the man before the man can sin against society. I therefore infer, that instruction alone can constitute a duty, and that laws can enforce no obedience but where they are explained. This, my Lords, is not factious doctrine, nor calculated to weaken the principle of obedience to the laws : they are precisely the sentiments of Sir William Blackstone, a judge whose principles were most unquestionably loyal, and who makes exactly the same distinction as I have done, between the *mala prohibita*, and the *mala in se* ; Blackstone’s Commentaries, Vol. iv. p. 8. between offences against the law of nature, and offences against the state. The lawfulness of punishing criminals, says he, is founded upon this principle, that “ *the law by which they suffer, was made by their own consent* ; it is a part of the original contract into which they have entered, when they first engaged in society ; it was calculated for, and has long contributed to their own security.” Now, if the consent of the punished be the only lawful principle of authority on the part of the punisher, that consent must be either express or implied : that it is an *express* consent, it can never be contended, and as to an *implied* consent, we are still authorised to ask, what is the ground of the implication ?

The publication of an act of parliament (the only mode of publication which government condescends to make use of) by the king’s printer, only—in the old German character, which few men can read—and which is sold at a price which as few can afford

ford to pay, rather resembles the behaviour of Caligula, the Roman tyrant, who (according to Dion Cassius) wrote his laws in a very small character, and hung them up on high pillars, the more effectually to ensnare the people, than the conduct of a legislature, whose authority being founded on the *consent of the people*, must, of course, *break their trust*, whenever they violate the principle which created them. To read to the prisoner, for the first time, when he stands at the tribunal, any act, for the breach of which he is arraigned, is to him precisely the same thing as it would be to originate it at the time by the same tribunal, for the express purpose of condemnation. In such case, indeed, he may perish by the *forms*, but certainly not by the *principles* of justice. Sir William Blackstone also regrets the frequency of capital punishments to be found in our code; and feelingly says, “that it is a melancholy truth, that among the variety of actions which men are daily liable to commit, no less than *one hundred and sixty have been declared by act of parliament to be worthy of instant death* ;” and adds, “that so dreadful a list instead of diminishing, increases the number of offenders.”

Gentlemen, it was upon a painful review of this subject, that I asserted that “government would far better instruct the people than hang up their bodies on gibbets ;” for as there is something in the nature of man, that disdains to be terrified, so severe punishments have never been found effectual to prevent any sort of crime. The most effectual way to prevent crimes is, to prevent the temptation ; to take care that the people be educated in virtuous principles, and every man brought up and enured to labour and industry that has no estate to subsist on. If this be not done, laws may be avenged, but cannot be obeyed ; they may inspire terror, but can never command respect.

Gentlemen, I must observe, and I think it lies within the compass of my defence to state to you, that we can only be innocent in coming down for the purpose of procuring reform, upon this supposition that reform was necessary ; and if I had not been allowed to go into the proof of that fact, I should stand in this melancholy situation—that a charge would be brought against me, and the only proper means of repelling that charge would be denied me.

Gentlemen, I now come to the dissection of the evidence, which, I trust, you will find to be so scanty and insufficient, as that it is impossible to fix upon me any well-grounded and colourable charge of sedition.

Gentlemen, the phantom conjured up to terrify the timid, the Medusa’s head which is to petrify you all with horror and astonishment, is the motion attributed to Mr. Sinclair, (which I shall shortly prove to you never passed) which not only inculcated the principle of resistance, but which the British Convention, it is asserted, meant to carry into execution.

I was

I was not a little surprised to-day, to hear this legal and constitutional principle denied in round and unqualified terms; when it should be recollected, that it is to this principle we owe our liberties. The right of self-preservation is a right of which no political institution can divest us, since political institutions themselves were formed only the more completely to accomplish that end. To support any political institution, therefore, by the destruction of that principle would be absurdly to sacrifice the end to the means. "If the laws of God and men (says Sydney) when the magistracy is left at liberty to break them, and if the lusts of those who are too strong for the tribunals of justice cannot be otherwise restrained than by *sedition*, tumults, and wars,—those seditions, tumults and wars, are justified by the laws of God and man." Sydney on Government, p. 188. For as all magistrates were set up for the good of the people; so whenever they act contrary to the end of their institution, they may be lawfully opposed: *Quia eatenus* (as Grotius well observes) *non habent imperium*. De Jure Belli, l. i. c. 4. Here, then, Gentlemen, you see the principles of resistance laid down by a writer on the civil law (with whose works their Lordships are possibly far better acquainted than I,) and recognised also by that sage and hero the immortal Sydney, who, after a life spent in a continual struggle against vice, tyranny, and faction, fell a martyr at last to the liberties of his country. The sentence passed upon him, however, by the infamous Jeffries, has met with the unanimous execration of posterity, and his attainder was accordingly reversed among the first acts which took place at the Revolution.

Gentlemen, were I called upon to give a definition of sedition or of rebellion, I would frankly avow, that I know of no other than this; *the conspiracy of the few against the interests of the many*. And this rebellion may be equally carried on by those who are entrusted with the power of the state, as by those who originally conferred it, and who are the objects of its exercise. "If those who by force take away the legislature," says Locke, "are *rebels*, the *legislators themselves*, as has been shewn, can be no less esteemed so, when they who were set up for the protection and preservation of the people, their liberties and properties, shall invade and endeavour to take them away: and so they, putting themselves in a state of war with those who made them the protectors and guardians of their peace, ARE PROPERLY, AND WITH THE GREATEST AGGRAVATION REBELS." Treatise on Government, octavo edition, p. 294-5.

This principle of resistance, Gentlemen, is deeply interwoven in our constitution, and is as strongly laid down, even by writers on our municipal law, as it is by those who are philosophical and speculative. "The liberties of Englishmen (says Blackstone, Vol. I. p. 144,) "should be perfectly known and confi-

“ dered by every man of rank and property, lest his ignorance of
 “ the points whereon they are founded should hurry him into
 “ faction and licentiousness on the one hand, or a pusillanimous
 “ indifference and *criminal submission on the other.*” Nor do I apprehend that this knowledge of the rights of Britons, is to be limited merely to men of rank and property, since the poor man is, and by the same means too, equally entitled to the preservation of his *mite*, as the rich man to the enjoyment of his millions. And of this opinion also seems to be the learned judge, when shortly after, he says, “ to vindicate these rights, when actually violated
 “ or attacked, the *subjects of England* are entitled, in the first
 “ place,” (the word subjects is certainly equally applicable to all descriptions, high and low, rich and poor,) “ to the regular
 “ administration and free course of justice in the courts of law ;
 “ next, to the right of petitioning the king and parliament for
 “ redress of grievances; and lastly, to THE RIGHT OF HAVING
 “ AND USING ARMS FOR SELF-PRESERVATION AND DEFENCE.” Vol. I. p. 144. Thus you see, Gentlemen, that these principles are neither new nor dangerous ; not new, because co-eval with the Revolution ; not dangerous, because avowed by a calm philosophical writer who enjoyed the favour and patronage of his sovereign, and since supported by the authority of an eminent writer, whose office it was to lay down the principles of law, and administer justice to the subjects of these realms.

Gentlemen, I defy our bitterest enemies to prove that it was ever our intention to make any practical application of these doctrines ; for, as the same learned judge well observes, “ all oppressions, as they may happen to spring from any branch of the
 “ sovereign power, must necessarily be out of the reach of any
 “ *stated rule, or express legal provision ;*” so I say with him also, that “ if ever they unfortunately happen, the *prudence of the times*
 “ *must provide new remedies upon new emergencies.*” Blackstone, Vol. I. p. 245.

Gentlemen, I shall now state to you, as shortly as I can, what was said by the witnesses. Mr. Scott says, I think, among other things, that when he came into the convention, on the 6th of December, he asked the chairman the object of our meeting. The reply was, that we were met for the purpose of addressing the king.

Mr. Davidson tells you, indeed, that he came for the purpose of dispersing the meeting. He was asked also, if there was any appearance of tumult ? He answers in the negative, that there was no appearance of tumult and disorder, though the president was forcibly taken out of the chair, to whom he at first gave a friendly shake, though he was afterwards obliged to convert it into a Cornish hug. We, then, gentlemen, were the persons who were forcibly assaulted, but we did not make use of force for the purpose of repelling force.

Gentlemen, the external proofs that have been alledged, particularly of this resolution which was said to have passed, amount

to what? They amount, in fact, merely to this, that a number of papers were taken from a public inn by the officer, and put into a loose bundle; then taken by him to the sheriff's office, where they were left for some time, without any particular attention being paid to them; certainly in so loose a state, that it was very possible for any other papers to have been put in; consequently all degree of credibility due to the evidence is done away, inasmuch as they were not sealed, though I understand it is always the custom to seal up papers, as it appeared from the evidence delivered to-day at the bar. For I conceive that after they had been in that loose state, it is impossible ever to identify these papers, unless the man has the faculty of looking through a pocket handkerchief. How is it possible, if the papers had been taken and put into a loose bundle, and suffered to lie a considerable time without any actual inspection, and several persons being in the room; how is it possible, I say, that these papers can be proved to be the same that were taken out of the room of Mr. Sinclair?

Gentlemen, you will find one material circumstance, however, to which, I trust, you will give your most mature consideration, which is, that an attempt to identify those papers should, by all regular and due course of evidence, have been made before they are produced to the jury, as the ground of criminating any pannel at this bar; for if they are not identified, I do not see with what colour of justice they can be brought forward for the purpose of criminating any person. This paper is not proved ever to have been adopted as a resolution by the convention. It no where appears, even in what is called the minutes of the convention, but which I deny to be the minutes of the convention; nor is there any proof that ever they were adopted by the convention as their minutes. It ought to have been proved to be in the hand-writing of Mr. Sinclair, who is the reputed author of this motion; and even if an attempt to identify his hand-writing had been made, even then I say the evidence would still have rested upon a very precarious foundation. In the case of Algeron Sydney, it was a similarity of hand-writing that was the principal ground of his conviction. That very circumstance also, Gentlemen, is recited in the act of parliament as one of the principal grounds of reversing his attainder; though the paper alluded to was found in the closet of Colonel Sydney, as this paper is said to have been found in the room of Mr. Sinclair. Sydney himself well observes, upon his trial, "that similitude of hands is nothing, as hands may be so counterfeited, that no man shall know even his own hand. A gentleman that is now dead," says he, "told me that my Lord Arlington, about five years ago, desired him to write a letter and seal it as well as he could. He wrote it with care, and sealed it with a wafer, and wax upon it; and within a few days my Lord Arlington brought him five letters, and he did not know which was his

"OWN"

"own." Trial of A. Syd. p. 31. If then, Gentlemen, even if there had been actual proof that this was in the hand-writing of Mr. Sinclair (a circumstance which never could be proved, and which has not this day been attempted to be proved,) if such actual proof, I say, would not have been admitted as sufficient evidence to criminate Mr. Sinclair, inasmuch as the motion in question never became part of the minutes of the convention—far less should this scroll of paper condemn me, who am only accused of verbally supporting the *written* motion which Mr. Sinclair is said to have made. If upon the trial of this excellent young man, who, at a period of life which the greater part of mankind consume in frivolous or vicious dissipation, is dedicating his whole time to promote the happiness of his fellow-creatures; if upon a subsequent trial an honest and impartial jury shall, as they must, acquit him of the charge, both upon a general conviction of his innocence, and particularly upon the insufficiency of the evidence brought against him, what must be the remorse, what the anguish of that jury, who shall have condemned the accessory upon that very evidence, which, on the fullest investigation, shall have been found incompetent to the conviction of the principal! This event, were it possible to happen, I should most deeply deplore, not merely on account of my own personal sufferings, but for the scandal it would affix to the administration of justice, for the disgrace it would bring upon our common country; and, above all, for the deep and lasting infamy that it would entail upon you, my countrymen, gentlemen of the jury. In such case, the principle of my condemnation would even be worse than that of Sydney; posterity would review it with equal abhorrence, and therefore let me conjure you, as you tender not only *my safety*, but your own *personal reputation*, suffer not the iniquities of *those* times to be revived and imputed to these.

Mr. Mack tells you, that he did not get the papers from Lyon, that they were lying in the room in the sheriff-clerk's office carelessly. Mr. Skirving's papers were sealed, it seems, but this motion upon which the great ground of criminality is laid, is suffered to lie loose. If that precaution was not taken equally in all cases, I certainly ought not to suffer for the negligence of the officer.

There is one certain and infallible proof, Gentlemen, that this motion, upon which so much stress is laid, never did, in reality, pass in the convention. It has come out in evidence, that the motion was marked by Mr. Aitcheson—if then it was marked by him, it clearly could not have been adopted by the convention; for if it had, it would have gone into the hands of the Secretary, who would have marked it with his own signature, and it would have constituted part of the minutes. On the contrary, you have strong circumstantial proof (the best that the nature of the case will admit) that so far from passing in the

convention, it was even laid aside; inasmuch as it was only marked by Aitcheson, and not by the secretary, whose practice it was invariably to mark them as an essential preparative to their insertion in the minutes. Besides, Gentlemen, where was this paper found? Was it found in the possession of Mr. Skirving, when *all* his papers were seized, and to whose custody all resolutions that passed in the convention were regularly committed? No; it was not even pretended to have been so found; it is stated to have been found in the custody of Mr. Sinclair alone, who was a simple member of the convention, and who was never entrusted with the guardianship of its minutes. This single fact renders all reasoning upon the subject unnecessary. It amounts to a moral demonstration of what I advance; and he who would not be convinced by proof so glaring, and facts so undeniable, would not receive *conviction though one should arise from the dead.*

Gentlemen, you, no doubt, are well aware, that it is the duty of jurymen to find the verdict *secundum allegata et probata, according to facts alledged and proved.* Many principles contained in those speeches attributed to me I glory in having uttered, as they are perfectly reconcileable with the soundest principles of government and good order. But there are parts of those speeches which are false and spurious. Animated, as I am, with a love of truth, and determined to tell it at whatever hazard, I will neither assume what I *have not* said, nor deny what I *have said.* If then, you give me credit, which, I am sure, as honest men you cannot withhold from me, for my veracity and openness in one instance, you have no right to mistrust me in another.

I have already told you, that as jurymen you are bound to find a verdict according to facts alledged and proved. I now, Gentlemen, will seriously ask what evidence have you, that the speeches charged in the indictment, and which are copied from the Gazetteer, are the real speeches which I made in the convention? What is the mode of proof? Thomas Cockburn tells you that he had a *general* recollection, when he was in the habit of reading the Gazetteer, that they bore a resemblance to the speeches which he has heard me make in the convention. Gentlemen, I trust you are well aware of the sacred duty which you are now to execute, and that you will be of opinion, that in a case so solemn as the present, a bare general recollection of what is said, or supposed to be said, in the heat of debate, will never constitute a sufficient ground of criminal conviction. I allow, that in the ordinary intercourses of life a general recollection is certainly sufficient ground whereon to form a judgement, otherwise human affairs must stand still. But you are not now met for the ordinary purposes of life, you are met to determine the guilt or innocence of a man accused, on the one hand, of having disturbed the peace, and esteemed on the other, for having attempted to promote the good of his country; and upon your determination will rest, not only his fortune and his fame, but, in all probability, his

his life itself. What then is the evidence upon which this great stake depends ? Mr. Cockburn, when pressed by my counsel, who, through the whole course of the cause have conducted themselves, not only like able counsel, but like firm and inflexible patriots, says, that he cannot identify one single passage. What does this confession amount to ? That he cannot swear they are the speeches I made ; for, if the terms general recollection have any meaning at all, I apprehend they have this meaning, that all general recollections are composed of the recollection of some *particular* passages. Now, he does not identify one single passage. Some of them you may deem criminal, and others innocent ; nay, even meritorious ; and, therefore, I presume you cannot convict any pannel upon such loose indeterminate evidence ; which is, at least, as likely to fix upon him what is praise-worthy, as it is to charge him with what is criminal. But he recollects “ a great many words interspersed in that speech.” Why, doubtless, Gentlemen, when Mr. Cockburn had heard any person speak for a considerable length of time, he must have some recollection upon his mind of what had passed ; but I trust that words interspersed through a speech are certainly too loose to found a verdict of conviction of a far less crime than that of which I am accused, and to authorize a punishment of far less severity than such as if convicted I shall inevitably suffer.

This, Gentlemen, is so far as concerns the first speech. But of the second speech he says he recollects less than of any other ; though this is the speech upon which Mr. Solicitor General chiefly founds his charge, and against which he has planted the whole artillery of the law. After all, Gentlemen, the witness, though closely pressed in his examination by the crown lawyers, closes his evidence with these remarkable words, “ *that he does not mean to identify any of the speeches.*”

Gentlemen, if the freedom and lives of British subjects are dependent upon the loose and general recollection of words spoken too at a considerable distance of time, we may, indeed *boast* our liberties and the benignity of our laws, but they are merely an *empty boast*, and not a solid and substantial good.

But, Gentlemen, there is one circumstance still stronger than any I have stated to you. If any person might be supposed to retain an accurate recollection of the speeches, it must be William Ross, who being able to write short-hand, would in all probability carry away with him, with more accuracy than any other person, the speeches which are attributed to me. Ross tells you, he never took notes by the express direction of the convention, nor ever published them by their order. Now, if charges of criminality are to be brought forward against men upon such loose evidence as this—the unauthorised transcript of a short-hand writer, and which transcript, or even verbal evidence, is to be taken as proof—we must deem the judicial process of our country not a shield of protection, but a rod of chastisement. Persons actuated

by malicious motives, the retainers of a profligate administration, may enter the meetings with a short-hand writer, and, for a small gratification, may induce him to take down, as the speeches of any member, words highly criminal, but which at the same time have never been spoken; and afterwards, by procuring them to be inserted in a newspaper, may subject the party to a state prosecution. Against this engine of persecution what remedy has innocence? Why, the party aggrieved may prosecute the printer for a libel, I mean if he has money, for that is a necessary ingredient to the attainment of justice; and if he has none, however deep the injury, and calamitous its consequence, he must sit down silent under the charge, until he has an opportunity of vindicating his innocence in court, when the Lord Advocate, who is, *ex officio*, the guardian of our liberties, shall be graciously pleased to drag him forth as the ill-fated victim of a state prosecution.

Gentlemen, the rules of evidence, being all founded upon the plain principles of common sense, must in all countries be nearly the same. In an English Court of Judicature, the evidence produced against me would, I am certain, be deemed incompetent to a conviction on the slightest charge. Why then in Scotland should not an equal measure of justice be meted out to me, an Englishman, which you, though Scotsmen, would in England readily obtain?

Furthermore, Ross the short-hand writer swears that he is not very well skilled in his art—which, even in the most skilful, is a fallacious mode of identifying a speech—nay, that he was afflicted with deafness when he attended the convention, and, having frequently lost the thread of my discourse, inserted of his *own invention*, a great part of that which appeared in his paper. Gentlemen, is not this single confession sufficient totally to destroy the identity of the speeches, and consequently the solidity of the evidence against me?—A question was asked by one of the jurymen which carried with it an apparent weight—whether any of the members of the convention had complained that their speeches were inserted or misrepresented? To which Ross answered, No. I am sure you cannot but be aware, that if the members of the convention had been in the constant habit of complaining of all the misrepresentations which the lying breath of rumour had circulated against them—if they had thought it necessary formally to contradict whatever malice propagated and credulity received—the object of their mission must have been entirely abandoned; and instead of asserting those principles which we felt to be just, our time would have been consumed in refuting aspersions which we knew to be false. No! Gentlemen, we rested upon the consciousness of our innocence, and upon the broad basis of public confidence, to which our honest and disinterested exertions had given us a claim.

George Ross depones, that I had no knowledge of the insertion of the words *Ca ira, Vive la Convention, Liberty Hall, &c.* but that

that he himself was the person who inserted them. I should not have repeated this insignificant circumstance, but that I observe unfair inferences have been drawn from it, in order to load us with additional guilt.

Gentlemen, I hold this to be a sound principle both of reason and of law, that if you once can prove that any meeting was in itself legal, though after the meeting any illegal resolutions were adopted, provided it cannot be proved that you were present at those meetings aiding and abetting those illegal resolutions so passed, no degree of criminality can possibly attach to you.

You are then to advert to the general principle which proves the legality of the meeting, and not to the particular resolution which if you did not support can never be brought in evidence against you. Much stress had been laid upon this committee of secrecy, upon which very strange and contradictory language has been held by the public prosecutor. Sometimes we are represented as a set of desperadoes, who met in open day for the purpose of violating the laws and the subsisting constitution of the country; at other times that we met in holes and corners, as our projects were so nefarious that they could not bear the light. To round the circle of contradictions, a learned judge upon the bench has declared, that "however criminal our intentions, our conduct was open, and in this respect our imprudence was equal to our guilt." By these various and even opposite charges, the punishment inflicted by the Sicilian tyrant is realized upon the unfortunate members of the convention---stretched upon the iron bed of legal torture, if too long we are lapt, if too short we are stretched. If we act with openness, then is our candor audacious guilt; if secretly, we only refrain from insulting our country by the publicity of our measures, that we may in greater security accomplish her ruin. Seven men, it seems, were deemed sufficient, by this resolution, to constitute a convention, which was to overturn the government. Absurd and impossible supposition! Were our rebellious troops, like those of Mr. Bayes, at Brentford, to start up when called for? Or, is it supposed that we were to realize the fable of Pyrrha and Deucalion, and generate men by casting stones behind us? The very supposition of your giving the smallest degree of credit to this absurd allegation, would reflect such disgrace upon *your* understandings, and is so highly derogatory to the British Constitution, the principles of which are the objects of universal reverence, that I cannot entertain it for a moment. For feeble, indeed, must the foundation of that constitution be, which can be even endangered, far less overturned, by a meeting of no more than seven individuals!

Gentlemen, from a particular expression stated in this indictment, *calamitous circumstances*, you must see that we looked upon every invasion to be calamitous, from whatever quarter it proceeded;--but, if we had intended to make an open opposition to the laws of our country, or were plotting its destruction secretly and
in

in the dark, we should, certainly, never have used an epithet of that description. The very insertion of the term calamitous proves to a moral demonstration that all invasions, from whatever quarter, would have been deemed objects not of approbation, but of regret.

Gentlemen, it has been said, that the admission of foreign troops into Great Britain was also one of the calamitous circumstances which would induce the convention to meet again. To this charge, if it will avail any thing to the public prosecutor, I freely plead guilty. As a Briton, I shall ever think myself bound to watch with anxious attention the introduction of any foreign troops, and upon this plain principle, that I conceive the native valour of Britons is always adequate to their own protection. If it be otherwise, we hold our freedom by the most brittle tenure—for as foreigners can have no common interest with Britons, the same mercenary arm which protects us for pay, may enslave us for plunder. But what does this resolution state? That we will do any thing *unconstitutional*? Far from it. It states that “we shall follow the wholesome example of our ancestors, by “paying no regard to any act which shall militate *against* the “constitution of our country.” Now, before government can properly make this resolution a ground of criminal accusation against us, they must confess that they either had passed, or meant to pass an act, *militating against the constitution*. For under no other circumstance was any opposition mentioned, or intended. Is it not rather singular then, that before they can infer *our* guilt, they must confess *their own*? Acts of parliament are in general sacred things, but they may be, in *particular cases*, so grievous and oppressive, that human nature will revolt from them. The constitution, as Treasurer Burleigh long since observed, can never be undone but by a parliament; which proves however, that a parliament *may* undo it. In the reign of Henry VIII. an act of parliament was passed, giving to the proclamations of the crown the validity of a law. It was also made a capital offence for any person to foretel the death of the king—in consequence of which, Sir Anthony Denny, his physician, when he lay at the point of death, was afraid to mention to him the danger of his situation. To judge or *believe* that Anne Cleves was not a virgin when she married him, was declared high treason. Until very lately for a gipsy to remain twelve months within the kingdom was declared felony without benefit of clergy. In Scotland, Evenus, the third king of that name, caused a law to pass, by which the wives and daughters of noblemen were exposed to his lust, and those of the commons to the lust of his nobility. *Tulit legem Evenus ut cui-vis liceret, pro opibus quot alere posset, uxores ducere; ut rex ante nuptias sponсарum nobilium, nobilis plebeiarum prælibarent pudicitiam, ut plebeiorum uxores cum nobilitate communes essent*, BUCH l. 4. c. 14. Many other acts might be mentioned which have long blotted and disgraced the statute book; are these acts, then, in the eye

eye of reason, proper objects of obedience? Nay, are they not rather honoured in the breach, than the observance? "Laws," says Hooker, "must be obeyed, *unless there be reason showed that the law of reason or of God doth enjoin the contrary.*" ECCLES. POL. B. I. sec. 16. Which plainly implies that there are bounds to the civil obedience of the subject. Acts of parliament, then, which are subversive of our happiness, are contrary to every right of civil society and comfort, utterly incompatible with all laws either moral or revealed, and therefore mere acts of power, having neither the force nor obligation of a law. But I deny that it was ever the intention of the Convention to resist any acts by force. The words of the resolution are, "unless compelled to desist by superior force. What was this force to be superior to? Why, forsooth, to twenty-one members peaceably met, and peaceably discussing political subjects. Nay, do not the very words themselves plainly import, that though the mere *mandate* of the magistrate (as such a mandate would be a gross violation of the law which he was bound to observe) would be disregarded by the Convention, yet the appearance of *force* would be the signal of dispersion? For upon what principle of common sense, or probability, can it be supposed that we should have wantonly exposed our lives to certain destruction by an appeal to arms? we, few in number, peaceful in intention, without ability to act, without hope to succeed, without power, without influence, without motive, without means.

But the sincerity of this declaration has been already evinced by a fact of recent date and public notoriety. When Mr. Sheriff Davidson, on the last evening on which the Convention sat, entered the hall, attended by constables and other officers, belonging to the *civil* power only, did the slightest symptom appear of an inclination to resist? No; Mr. Margarot and myself, who successively acted as presidents that evening, were indeed forcibly pulled out of the chair; because, as we were conscious, that we could not be *legally* ordered to quit it, a voluntary abdication would have been justly interpreted as a dereliction of our right. But did we resist, I again repeat? No; Mr. Davidson's testimony this day has confirmed my assertion. We dispersed, he tells you, without tumult or disorder. It was we, then, against whom force was employed, but who employed none. We *suffered* injury but *offered* none.

The introduction of foreign troops into the kingdom, *without the sanction of parliament*, is an infringement on the Bill of Rights, and a violation of the constitution of our country. Doctrines, I know, have been openly avowed by the minister, justifying the measure as legal and constitutional; but this avowal, I believe, struck every one who heard him, his own creatures excepted, with horror and astonishment; nor do I apprehend, that at a future though not distant period, he will be fond of repeating what in the plenitude and insolence of power he has lately advanced.

Lord Stanhope, who is a member of that legislature which ought to be the peculiar guardian of our rights and privileges, and who, I believe, is as incorrupt a senator as ever this country gave birth to, since, like another Socrates at Athens, he preserves himself free from the contagion which is every where raging around him; Lord Stanhope, I say, with his accustomed honest daring thus expressed himself upon the subject of which I am now speaking: "Armies (said he) have in all ages been the engines of tyranny, and by them the civil rights and liberties of all nations have been destroyed. The measure is of itself such a flagrant violation of the constitution, that if the same arguments are used in support of it in this House which have been used in another place, I make no difficulty in declaring that the authors and abettors of such blasphemous doctrines *ought not to survive their treason*. I feel (continued he) as little difficulty in declaring that IF THOSE TREASONABLE DOCTRINES ARE ATTEMPTED TO BE PUT INTO EXECUTION BY THE EXECUTIVE GOVERNMENT, IT THEN BECOMES THE DUTY OF THE PEOPLE TO RESIST FORCE BY FORCE." If then this excellent man could hold with impunity in the senate itself, and in the presence of the great officers of state, these bold but constitutional doctrines, upon what pretext of law, or under what colour of justice can you presume to punish me, who have merely stated *hypothetically*, what he has advanced, plainly, openly, unconditionally?

Gentlemen, I cannot but observe one very unfair suspicion which the crown lawyers have endeavoured to infuse into your minds during the course of these trials. In order to inflame your passions, at the same time that they may assume to themselves an *appearance* of lenity, they tell you that the crimes with which we stand charged approach very nearly to high treason; and an appeal, not very honourable I think to the appellants, is continually made to old and obsolete statutes, on which state prosecutions were grounded when tyranny was at its height, to prove, that had we fallen, like the apostles of freedom, in the last century, on those "evil days," like them too we should have been the victims of a legal tyranny. This procedure I must consider as abhorrent, from the cool and sober rules of justice. Suffer not, therefore, I conjure you, your tempers to be inflamed, to the destruction of an innocent man, because the public prosecutor, in the rage and phrenzy of loyalty, has thought proper to dig into the dusty rubbish of antiquity, under which the embers of despotism have long been smothered, and to "awaken those sleeping lions, by rattling up a company of old records which have lain for so many ages by the wall neglected and forgotten."*

Gentlemen, another circumstance, upon which much stress has been laid, is that of a blank appearing among the minutes; and

* See Lord Strafford's Speech in the State Trials.

as this blank followed after the resolution which we have just now been discussing, it has been unfairly inferred, that it was our intention to fill it up with matter, at a proper and convenient season, the publication of which would have amounted to high treason. But, Gentlemen, if you will turn to the minutes, you will find that there is not one blank alone, but many. And this circumstance, when coupled with the observation of the Solicitor General, must convince you how extremely dangerous it is to condemn any man upon the evidence of these minutes, which have been so long in possession of those who are the officers and dependents of government. For, as state prosecutions are frequently the instruments by which a profligate administration sacrifice the bold and incorruptible expositors of their measures, so it is always in the power, as no doubt it must be frequently in the inclination of the public prosecutor, to fill up the blanks with more heavy and additional matter, which being confounded with the original minutes, may be offered in evidence to a jury, as a sufficient ground of conviction for high treason.

The difference of process, and of the criminal codes of Scotland and England must, to every thinking mind, be a subject of most serious alarm. In the southern parts of the kingdom, nay, in the capital itself, the seat of the legislature, and the fountain head of all justice! men are suffered to meet under the very beard of the Secretary of State, and to pass with impunity resolutions exactly corresponding in principle, and equally strong in expression with those, which, if passed in Scotland, will send both the mover and seconder, in company with thieves, felons, and murderers, to toil and perish on the bleak and inhospitable shores of New Holland. Is the Tweed then, which the God of nature has made only to be a geographical separation between the two countries, by the folly and wickedness of man to be perverted into a legal, a moral, a political separation? The resolution to which I have just now alluded, was a resolution passed by the London Corresponding Society, and is as follows: "That during the ensuing session of parliament, the general committee of this society do meet daily, for the purpose of watching the proceedings of the parliament, and of the administration of the government of this country. And that upon the first introduction of any bill, or motion inimical to the liberties of the people, such as for
 "LANDING FOREIGN TROOPS IN GREAT BRITAIN OR IRELAND,
 "for repealing the HABEAS CORPUS ACT, for proclaiming
 "MARTIAL LAW; OR FOR PREVENTING THE PEOPLE FROM
 "MEETING IN SOCIETIES FOR CONSTITUTIONAL INFORMATION, OR ANY OTHER INNOVATION of a similar nature; that
 "on any of these emergencies, the general committee shall issue
 "summonses to the delegates of each division, and also to the secretaries of the different societies affiliated and corresponding
 "with this society, forthwith to call a GENERAL CONVENTION
 "OF THE PEOPLE, to be held at such place, and in such a manner

“ as shall be specified in the summons, for the purpose of taking
 “ such measures into their consideration.

“ Resolved, That the preceding address and resolution be signed
 “ by the chairman, and printed and published. J. MARTIN,
 “ *Chairman.* T. HARDY, *Secretary.*

Upon these resolutions, though circulated throughout the united kingdoms, no prosecution has been grounded. Are we not then to infer, either that the Secretary of State has been criminally negligent of his duty, and that though he crushes sedition in Scotland, he tolerates it in England; or, for upon no other principle can he be excused, that the resolutions and the publication of them are perfectly harmless, and that the code of Scotland which marks them out as objects of punishment, like that of Draco, is written in blood.

Gentlemen, during my trial a principle has been laid down by the Lord Justice Clerk, which I deem to be, in the highest degree reprehensible, as it strikes at the root of that confidence which all men should repose in law, and of that security which all men have a right to expect from it. The Lord Justice Clerk declared that the judges had a *discretionary* power in annexing the punishment to the particular crime of sedition. Had a judge in England held a similar doctrine, the judgement seat would have tottered under him. If law be a certain rule of action, defining the offence and annexing the punishment, the degree and nature of the punishment should be specified with equal precision as the degree and nature of the offence; otherwise we hold our freedom as mere *tenants at the will* of a judge, and not as we ought, by the known and explicit declaration of the laws. Lord Camden, the first law authority in England, has said, that “DISCRETION IS
 “ THE LAW of tyrants; in the best men it is caprice, in the worst
 “ it is every folly, vice, and infirmity, to which human nature is
 “ liable.”

Gentlemen, let not the word *discretion* mislead you. *Legal discretion* is not the *arbitrary* discretion of the judge. No; it is as well defined by Lord Coke, *discernere per legem quid sit justum*, “ to discover through the medium of the law that which is just
 “ and proper.”—“ Judges must determine,” (says the preamble to an old statute of Henry VII.) “ not by the crooked cord of
 “ discretion, but by the golden met-wand of the law.” A beautiful expression, and full of intrinsic wisdom.

“ *Misera est servitus*, (says Lord Coke,) *ubi jus vagum atque incognitum est*: wherever the law is vague and uncertain, the
 “ people are in a state of wretched slavery.” And that law is certainly vague and uncertain, which, not specifying the punishment as well as the crime, leaves it to the arbitrary discretion of the judge.

Gentlemen, my feelings, my exertions, and my state of health have exhausted me.

Lord Henderland. You may sit down, Mr. Gerrald, and take a little breath.

Mr. Gerrald. I thank your Lordship.

(*Mr. Gerrald having rested a few minutes, proceeded as follows :*)

Gentlemen, I trust that I have now proved to your conviction the general purity of my intention, of which the object was to carry into execution, a constitutional reform in a peaceful manner; that however we may differ as men and citizens upon speculative principles of government, yet the doctrines which I have advanced are founded upon the great and immutable principles of reason and of truth; that they are the sentiments of the most revered writers, Locke, Sydney, Jones—that even Mr. Pitt and the Duke of Richmond formerly *professed* to act upon them; that they are perfectly congenial to the spirit of the Anglo-Saxon government, and not in a great degree differing from the principles of the old constitution of Scotland, as Dr. Stewart has proved to you; that our peaceful resolution of obtaining a reform was never violated by our practice, as the testimony of Sheriff Davidson evinces; for when assailed by the civil power, we repelled not force by force—that the officers of the law violated the law in their illegal assault upon our persons; and that even *then* such was our desire to preserve the public peace, that we chose rather to *suffer* than to *act*; though we could have acted under the shelter of those laws which we are falsely charged with having a design to subvert.

As men whose rights and security are interwoven with our own, advert, I beseech you, to the circumstances of our dispersion. The first magistrate in this city, attended by a posse of constables, enters the convention hall, when the members who composed that convention were assembled upon a legal principle, for a constitutional purpose, and conducting themselves in a calm and peaceful manner. Without reading the riot act, for which, indeed, he could have no pretext, from the object and conduct of the meeting, he forcibly drags the president from the chair, and disperses the convention. At a future day, when a meeting is advertised to take place, not as the BRITISH CONVENTION, but of THE FRIENDS OF THE PEOPLE, the magistrates of Edinburgh, attended by the town guard, block up the passage to the house which we had hired as a place for our calm and peaceful discussion, and though not the slightest appearance of tumult existed, *forcibly* prevent the members from assembling.

Gentlemen, if the principle upon which these magistrates acted be a principle authorized by any human code, I say that its operation and effect must be the abasement of the human species, and the extinction of civilized society. It divests us of the right of exercising our powers of reason, and places us in a situation beneath the beasts that perish. If the magistrate of any country makes *supposed principles* and not *actions* the object of coercion; it

if upon his own loose constructions and speculations of danger he commits outrage, under pretence of preventing it ; if, instead of arguing from the consequence to the principle, he inverts every rule of right reason, and infers the consequence from what he thinks proper to *adjudge* the principle, the safety and freedom of human action is at an end. In such case the magistrate takes upon himself to determine that which is undeterminable ; to mark as an object of punishment not a *present* and *actual*, but a future possible and contingent consequence ; and by punishing *motives* which have not displayed their qualities by their effects, to arrogate to his own limited and short-sighted capacity, a privilege which belongs only to Eternal Omnipotence.

Feeble, indeed, must be that civil government which depends for support, upon every trivial occasion, upon the aid of the military arm. But in the case alluded to, we had at least one consolation ; the soldiery who interposed were not a foreign, but a British soldiery ; and I trust, that however the latter may be for a time deluded, they will recollect, upon all great and trying occasions, that though necessity may have made them soldiers, yet society has made them citizens, and nature has made them men. But not only are the principles which I defended pure, but even had they been otherwise, the evidence, I affirm, which has been produced in order to fix them upon me, has been incompetent to its avowed purpose. Not the slightest evidence has been afforded, that the convention either published, or caused to be published by their authority, these scrolls of paper attributed to them as their minutes. They never authorised the publication of any speeches which were made in the convention ; nor does it appear by any testimony, that the speeches printed in the *Gazetteer* were identically the speeches delivered in the convention. On the contrary, Ross, the short-hand writer, swears, that he frequently inserted, from his own mind, words and sentiments which never fell from the speaker. There is no proof that the motion attributed to Mr. Sinclair, which is the great ground for criminating me, ever passed the convention ; and even if it had, an attempt to identify that motion with the paper produced, should certainly have preceded its being produced in evidence. Why was this attempt not made ? The reason is obvious, it must of necessity have failed. For was it not proved to you, that all Sinclair's papers which were seized, were thrown into a loose bundle, unsealed, tossed for a considerable time about the sheriff's office, in a state in which it was very easy for any person to have inserted other papers not belonging to Mr. Sinclair, consequently all possibility of proving the identity of the papers absolutely destroyed.

With respect to the speeches attributed to me, not one witness would identify upon oath any one single passage which they contain. And even Cockburn, whose testimony upon that point is the strongest, declares, that he has only a general loose recollec-

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tion of what passed ; a ground certainly too scanty and insufficient for the conviction of a man whom the laws of his country *presume to be innocent* ; and which presumption can never be destroyed but by the establishment of stronger proof. *Stabitur præsumptioni donec probetur in contrarium.* "The presumption stands till the contrary is proved." *Co. Litt.*

But the particular circumstance to which I beg to chain down your attention, is the assertion of the public prosecutor, that if you were convinced that my intentions were pure, you were bound in duty to pronounce my acquittal. Yes, Gentlemen, this is the solid rock of my defence ; the purity of the intention by which I was actuated. Could any thing but an ardent love of truth, and a desire of promoting the happiness of my fellow-creatures, have induced me to brave the present prosecution, and by dispelling the mist of prejudices which darkens their understandings, promote the happiness even of my prosecutors themselves ? In this glorious, though arduous undertaking, by what possible motive of gain or ambition could I have been actuated ? Examples have not been wanting of *men of whom the world was not worthy*, who have fallen victims to an active and zealous virtue ; but their fate will never deter firm and well-regulated minds from the performance of that which they will consider as the most sacred of duties, the fulfilment of their engagements to their oppressed and insulted country. These were the sentiments which actuated the conduct of our common master when he wept over the city, "O Jerusalem, Jerusalem ! thou that stonest the prophets, and slayest them that are sent unto thee ; how often would I have gathered ye, even as the hen gathereth the chickens under her wing, but ye would not !"

In every relative situation of life, we should do our duty, however hazardous, and leave the consequences, which *must* be ultimately beneficial, to the Supreme Disposer of all human events.

Gentlemen, when you consider that one great object of the Convention was to promote a more close and sincere union between England and Scotland, you cannot reasonably convict as a disturber of the public peace, any man engaged in so laudable an undertaking. Yes, it is our pride and our boast that the extinction of those national prejudices which have too long disturbed and disgraced both parts of the kingdom, was one great motive of our honest exertions. And, surely, our time is far better consumed in strengthening the cement of affection which, as inhabitants of the same island, it is so natural for us to feel, than in wasting and exhausting ourselves in the wrangles and contentions of the continent, by which we abandon our local advantages as islanders, and ultimately expose ourselves to become the prey of some foreign or domestic invader. To achieve mighty conquests is the lot of few, because few there are, who have either ability or opportunity to obtain them. But to cherish and disseminate the principles

principles of peace and good-will towards all men, is certainly the duty of all, because it lies within the power of all, and must contribute to the happiness of all. Moderate talents, steady exertion, and good intentions, are fully adequate to this end. This was all to which the members of the Convention made pretence; and they repose themselves with confidence upon the judgement which their country may pass upon their conduct, whether the powers which they displayed, and the means which they adopted, were not well calculated for its attainment.

The Solicitor General, indeed, during the course of this trial, has distinguished me by a marked and particular compliment; but it was coupled with a charge, that if I am guilty, must render me doubly so; that my efforts were exerted to disturb the peace of my country. No, Gentlemen, whatever portion of talents God has thought proper to confer upon me, has never yet been prostituted to so infamous a purpose, and I turn with horror from a compliment to my understanding, which can only be purchased by the extinction of every generous sentiment of the heart, and the sacrifice of all things that are sacred among men.

Gentlemen, when I look forward to the political horizon, the prospect seems awful and gloomy to a degree, at which the best men must shudder, and the ablest men must feel themselves incompetent to describe. Every thing is turbid and portentous. Indeed, a blacker cloud never hung over this island. Those who are versed in the history of their country, in the history of the human race, must know, that rigorous state prosecutions have always preceded the era of convulsion; and this era, I fear, will be accelerated by the folly and madness of our rulers. If the people are discontented, the proper mode of quieting their discontents is, not by instituting rigorous and sanguinary prosecutions, but by redressing their wrongs, and conciliating their affections. Courts of justice, indeed, may be called in to the aid of ministerial vengeance; but if once the purity of their proceedings is suspected, they will cease to be objects of reverence to the nation; they will degenerate into empty and expensive pageantry, and become the partial instruments of vexatious oppression. Whatever may become of me, my principles will last for ever. Individuals may perish, but truth is eternal. The rude blasts of tyranny may blow from every quarter; but freedom is that hardy plant which will survive the tempest, and strike an everlasting root into the most unfavourable soil.

Impressed with the justice of these sentiments, dungeons, fetters, exile, carry no terror to me; for I say with the immortal Sydney, that "though I have a particular love to my country, of which, I hope, that I have given some testimony; though I think that being exiled from it is a great evil, from which I would redeem myself with the loss of a great deal of my blood, yet, when that country of mine, which used to be esteemed a paradise, is now like to be made a stage of injury; the liberty
" which

“ which we hoped to establish oppressed ; the best of our nation
 “ made a prey to the worst ; the parliament, court, and army
 “ corrupted ; the people enslaved ; all things vendible, and no
 “ man safe, but by such evil and infamous means as flattery and
 “ bribery ; what joy can I have in my own country in this con-
 “ dition ? Is it a pleasure to see all that I love in the world sold
 “ and destroyed ? Shall I renounce all my old principles, learn
 “ the vile court arts, and make my peace by bribing some of the
 “ crew ? Shall their corruptions and vice be my safety ? Ah !
 “ no ; better is a life among strangers, than in my own country
 “ upon such conditions. Whilst I live, I will endeavour to pre-
 “ serve my liberty ; or, at least, not consent to the destroying of
 “ it. I hope I shall die in the same principles in which I have
 “ lived, and will live no longer than they can preserve me. I
 “ have in my life been guilty of many follies, but, as I think, of
 “ no meanness. I will not blot and defile that which is past, by
 “ endeavouring to provide for the future. I have ever had in
 “ my mind, that should God cast me into such a condition, as that
 “ I cannot save my life, but by doing an indecent thing, he shows
 “ me the time is come when I should resign it ; and when I can-
 “ not live in my own country, but by such means as are worse
 “ than dying in it, I think he shows me I ought to keep myself
 “ out of it.” See *Sydney's Letter*.

Gentlemen, I am in your hands. About my life I feel not the slightest anxiety ; if it would promote the cause, I would cheerfully make the sacrifice ; for if I perish on an occasion like the present, out of my ashes will arise a flame to consume the tyrants and oppressors of my country.

Moral light is as irresistible by the mind, as physical by the eye. All attempts to impede its progress are vain. It will roll rapidly along ; and as well may tyrants imagine, that by placing their feet upon the earth they can stop its diurnal motion, as that they shall be able, by efforts the most virulent and pertinacious, to extinguish the light of reason and philosophy, which, happily for mankind, is every where spreading around us.

Surely the experience of all ages should have taught our rulers, that persecutions never can efface principles ; and that the thunders of the state will prove impotent, when wielded against patriotism, innocence, and firmness. Whether, therefore, I shall be permitted to glide gently down the current of life, in the bosom of my native country, among those kindred spirits whose approbation constitutes the great comfort of my being, or whether I be doomed to drag out the remainder of my existence amidst thieves and murderers, a wandering exile on the bleak and melancholy shores of New Holland, my MIND, equal to either fortune, is prepared to meet the destiny that awaits me.

“ *Seu me tranquilla senectus*

“ *Expectat, seu mors atris circumvolat alis,*

“ *Dives, inops, Romae, seu forsita jussit, EXUL.*

H

T.

To be torn a bleeding member from that country which we love, is, indeed, upon the first view painful in the extreme; but all things cease to be painful, when we are supported by the consciousness that we have done our duty to our fellow creatures; and a wise man rising superior to all local prejudices, if asked for his country, will turn his eyes from "this dim spot which men call earth,"* and will point, like Anaxagoras, to the Heavens."

Gentlemen, my cause is in your hands.—You are Britons—You are freemen.—Nothing more therefore is necessary to be said. You have heard the charge, you have heard the evidence, and you know the punishment which follows upon conviction. Weigh well, then, whether the charge itself involves any guilt; whether the evidence produced *affixes* that charge upon me; and above all, whether in case of conviction, the punishment which I am to suffer, is not more than proportionate to the offence.

Before I take my leave of you this night, perhaps for ever, let me remind you, that justice is in every situation, and in none more than that of a jury, to be administered in mercy. Upon your strict attention to this grand moral maxim depend your own final doom and unalterable allotment, and to those who refuse to practise it "the throne of mercy will be inaccessible, and "the Saviour of the world will have been born in vain."

Rambler.

* Milton.

Parallel

Parallel Passages between the Speeches of Lord Chief Justice JEFFRIES, in the Case of ALGERNON SYDNEY, and of the Judges of the High Court of Judicature, particularly of the Lord Justice CLERK, on the Trial of JOSEPH GERRALD.

Lord Advocate. The prisoner has received that indulgence which calumny itself cannot reach. *Trial of Joseph Gerald*, p. 8.

Lord Justice Clerk. Now I am sure you must be conscious that you have had all kinds of indulgence. *Ib.* p. 10.

Lord Justice Clerk. All that you have been saying is sedition. *Ib.* p. 205.

Lord Dunfinnan. I think your Lordships ought to pay no attention to his objection, either in one shape or other. *Ib.* p. 15.

Lord Justice Clerk. Every man's life and liberty is secured by the laws of the country. *Ib.* p. 235.

Lord Justice Clerk. (After having interrupted the prisoner.)—Go on in your own way. *Ib.* p. 205.

Lord Swinton. "The great art of government," says the pannel, "is this, that all should be governed by all;" that is to say, that the whole of the suffragants, the whole voters, shall be governed by the whole voters. What is this but saying, that the multitude shall

Lord Chief Justice Jeffries. We must tell you, we ought not (perhaps in strictness) to have given you so much favour as we did. And because you did particularly take notice of the case of Sir Henry Vane, I will show you the court did indulge more to you than was done to that person. *Hargrave's edition of State Trials*, vol. 3, 4, p. 797.

Lord C. Justice Jeffries. There is not a line in your book scarce but what is treason. *Ib.* p. 820.

Lord C. Justice Jeffries. If you make objections that are immaterial, we must overrule them. *Ib.* p. 820.

Lord C. Justice Jeffries. God be thanked we are governed by law. *Ib.* p. 808.

Lord C. Justice Jeffries. Take your own method, Mr. Sydney. *Ib.* p. 808.

Lord C. Justice Jeffries. There shall be no such thing as government, if the people shall be judge in the case. For what so uncertain as the heady and giddy multitude. *Ib.* p. 816.

Lord

be governed by the *multitude*? Who would be chose a judge by such governors! Ib. p. 114.

Lord Justice Clerk. If there is nothing to substantiate the charge, you will find the pannel not guilty. (*To the jury.*) Ib. p. 234.

Lord Justice Clerk. I feel for the distresses of convicts as much as any man who hears me. Ib. p. 250.

Lord Justice Clerk. I don't see that the pannel can be supposed to know the laws of this country. I am, for my own part, for giving him counsel. Ib. p. 8.

Lord Justice Clerk. Taking his own account of the matter to be just; supposing that he has acted from principle, and that his motives are pure, I do say that he becomes a more dangerous member of society *than if his conduct was really criminal*, and acting from criminal motives. A man acting from *criminal motives* is not so dangerous a member of society as a man who thinks he is acting from *principle*. Ib. p. 251.

Lord C. Justice Jeffries. If you be not guilty, I pray God you may escape. (*To the prisoner.*) Ib. p. 796.—Even Jeffries *affected* humanity.

Lord C. Justice Jeffries. I should be very loth to draw the guilt of any man's blood upon me. Ib. p. 796.

Lord C. Justice Jeffries. Those things that you may have by law, God forbid but you should have the benefit of them. Ib. p. 796.

Lord C. Justice Jeffries. Some men may by *passion* be transported into such an offence, and though the offence be never the less, *whatever the motives are*, yet in some it is less dangerous. But this gentleman proceeds upon a surer foundation, it is his reason, *it is his principle*, that is the guide of all his actions. This is the more dangerous conspiracy in this man, by how much the more it is rooted in him; and how deep it is you hear, when a man shall write as his principle, &c. It will be a very sad case *when people act this according to their consciences*, and do all this for the good of the people, as they would have it thought; but this is the *principle* of this man. Ib. p. 816.

F I N I S.

